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NO. 85-57812

KENNETH MUNN AND WIFE, IN THE DISTRICT COURT OF
DOLORIS MUNN

VS HARRIS COUNTY, T E X A S

PHILIP MORRIS,
INCORPORATED,
ET AL 215 TH JUDICIAL DISTRICT

DEPOSITION
of
SIMON O'SHEA
Volume I

Witness in the above-styled cause, called by the
Plaintiffs, taken before Alice A. Janetsky, Shorthand
Reporter for the State of Texas, at the offices of
Debevoise and Plimpton, New York City, New York
before the Master in Chancery, Professor Al Taylor,
commencing at 9:30 a.m. on the 6th day of December,
1986, pursuant to Notice and Subpoena and following
Stipulations of Counsel.

COPY

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BUTLER CTR 005072

A P P E A R A N C E S

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1 APPEARANCES (Continued)

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3 Tobacco CompanyMr. Michael J. Farley
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6 Liggett & Meyers
7 Tobacco CompanyMr. Gerzog
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8 Lorrillard, Inc.

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12 The Tobacco
13 Institute, Inc.Ms. Margaret Alexander
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15 Council for
16 Tobacco ResearchMr. William Key Wilde
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19 Mr. Herbert Dym
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24 Company, Inc.
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25 Price & CompanyMs. Amy Stout Bean
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1 APPEARANCES (Continued)

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3 Dr. Fred GillerMr. Kyle R. Sears
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1 MS. ALEXANDER: On the record
2 I want just to put a few agreements
3 on the record. Initially, this
4 witnesses is not a resident of
5 Texas and is not a party to this
6 this action. He is appearing
7 voluntarily by agreement.
8 Secondly, we have through the
9 courtesy of Mr. Watkins --

10 MR. WATRINS: And Ms.
11 Courington --

12 MS. ALEXANDER: A confidentiality
13 agreement. Let me state terms of it.
14 As you know it is exactly
15 comparable to the agreement about Mr.
16 Kloepper, with respect to the
17 deposition testimony given here
18 today. All information contained
19 therein, all exhibits to the
20 deposition are subject to an
21 interim non-dissemination agreement
22 the material will not be used
23 outside of Mr. Hanks' and Mr.
24 Watkins' law offices, to be used by
25 them and by personnel employed by

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1 those law firms.

2 Within thirty days following
3 our receipt of the deposition of
4 Mr O'Shea, Counsel will designate
5 any portion of the deposition and
6 the exhibits to which we will
7 establish confidentiality claims.
8 We will inform plaintiffs.

9 Within a reasonable time,
10 they will let us know any
11 objections that conflict.

12 Within a reasonable time of
13 their letter telling us of their
14 objections, we will file a motion
15 for a ruling on the protective
16 order. Until the ruling, the
17 interim non-dissemination agreement
18 will continue to govern.

19 MR. WATKINS: May be used
20 in all of our Texas cases.

21 MS. ALEXANDER: That is the
22 agreement as I understand it.

23 MR. WATKINS: That's what we
24 have always agreed to, protective
25 orders.

1 MS. ALEXANDER: So long as any
2 material filed will be filed under
3 seal.

4 MR. HANKS: This is going to
5 relate to a lot of the matters that
6 were covered with Mr. Giller by
7 Richard Lagarde and one of his
8 legal assistants. He was present
9 during that. And he probably read
10 the transcript. We would like for
11 him to be able to read this stuff
12 and know what's in it. Richard is
13 co-counsel in one of our Texas
14 cases.

15 MS. ALEXANDER: Is he counsel
16 of record in this case?

17 MR. HANKS: Not in this case.

18 MS. ALEXANDER: Consolidated
19 case 578127.

20 MR. TOWNSLEY:: I don't think
21 so.

22 MS. ALEXANDER: It doesn't
23 strike me immediately as a problem,
24 but it is not in the agreement.
25 Reserve my view on that, as you say.

1 MR. WATKINS: We will take it
2 up with The Court if there is any
3 problem.

4 MR. HANKS: You said Mr.
5 O'Shea's counsel, and who is Mr.
6 O'Shea's counsel?

7 MS. ALEXANDER: Covington &
8 Burling.

9 MR. HANKS: When did Covington
10 & Burling become Mr. O'Shea's
11 counsel?

12 MS. ALEXANDER: When the issue
13 arose, I am representing him and
14 also counsel for the Tobacco
15 Institute.

16 MR. HANKS: Again I have a
17 problem with a counsel for a
18 non-party witness participating in
19 the deposition. I don't think
20 it's appropriate. I think you can
21 participate on behalf of The
22 Tobacco Institute

23 MS. ALEXANDER: You have
24 objections to having the witness
25 represented at this deposition, is

1 that what you are saying?

2 MR. HANKS: He can have a
3 lawyer here.

4 MR. RUSKIN: We are
5 representing Mr. O'Shea at his
6 deposition. If you have an
7 objection, it's your choice whether
8 to go forward or not go forward.

9 We are representing Mr.
10 O'Shea.

11 MS. ALEXANDER: Then I think
12 we would also have on the record,
13 the usual agreements: The witness
14 may sign his deposition before any
15 notary.

16 MR. HANKS: Is there any
17 objection to a Texas court
18 reporter taking down the
19 testimony?

20 MS. ALEXANDER: No, there is
21 no objection.

22 MR. HANKS: I take it that
23 goes for yesterday's deposition.

24 MS. ALEXANDER: I can't speak
25 to yesterday's deposition.

1 MR. HANKS: No objection was
2 made at the time so it's probably
3 waived anyway.

4 MS. ALEXANDER: Mr. Hines, do
5 you have anything to say about it?

6 MR. HINES: I was -- what was
7 the issue?

8 MS. ALEXANDER: The question
9 was is there any objection to this
10 Texas court reporter taking down
11 the proceedings yesterday?

12 MR. HINES: There is no
13 objection. I thought in fact that
14 we had said that in the
15 stipulations that we had at
16 the prior deposition of Jenkins,
17 and which included that one.

18 MR. HANKS: Fine.

19 MS. ALEXANDER: We will
20 reserve all objections except as to
21 form, for the time of trial. The
22 obvious exception to that is the
23 objections that will be made on
24 behalf of the companies concerned
25 with the attorney-client privilege,

1 work product, and consulting experts
2 as found in 166(B). To the best of
3 my ability I will state such
4 objections, state what the basis
5 for them is as I have been
6 authorized by the companies to
7 do so. Needless to say, they are
8 here representing their client. To
9 the extent necessary, they too
10 will raise the objections.

11 We will probably try
12 with the Master's permission
13 to hold until a convenient time
14 the in camera questions as we
15 do not find ours going in and
16 out all time.

17 MR. SMITH: Mr. O'Shea
18 was involved in dealing with
19 attorney work product of the
20 defendants at one point in time
21 in his career. We have been
22 instructed to preserve the
23 work confidentiality of the
24 product, and of any attorney-client
25 privilege there may be. And

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1 we have authorized and asked
2 this counsel for Mr. O'Shea to
3 pose objections as to that
4 confidentiality. For
5 convenience today I would like to
6 have the same stipulations we had
7 at Mr. Kloepper's, that counsel for
8 Mr. O'Shea can raise his objections
9 and they will be the objections on
10 behalf of all the manufacturer
11 defendants.

12 MR. HANKS: Fine. Fine. Just
13 to help me, Margaret, if you make
14 such an objection and if it's for
15 The Tobacco Institute, just say it's
16 for the objection of the Tobacco
17 Institute. Then I would like to have
18 that differentiation when it is for
19 the companies or is not for the
20 Institute.

21 MS. ALEXANDER: I don't know
22 that I will remember, but let's you
23 and I both try to make sure our
24 record is clear.

25 MR. HANKS: I asked Mr. Dym.

1 I think I lost track, too.

2 (Whereupon Mr. Parrish entered
3 the deposition room and was present
4 for the remainder of the
5 proceedings.)

6 MS. ALEXANDER: Anything else
7 to be put on the record before the
8 witness is sworn?
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1
2 SIMON O'SHEA,
3 called as a witness by the plaintiffs and,
4 having been first duly sworn, testified as
5 follows:
6

7 EXAMINATION

8 BY MR. HANKS:

9 MR. HANKS: The first order
10 of business, I guess will be to,
11 if you will, go ahead and mark
12 this ahead of time as Exhibit
13 No. 1.

14 (O'Shea Exhibit No. 1 was
15 marked for identification and
16 a copy is attached hereto.)

17 MR. HANKS: Exhibit No. 1
18 consists of, it will
19 consist of 35 pages, these
20 documents are --

21 MR. SMITH: Off the record.

22 (Whereupon there was a
23 discussion off the record.)

24 MR. HANKS: Exhibit No. 1
25 consists of 34 pages. And there

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1 will be another page added that
2 was given to us yesterday by
3 counsel for The Council for
4 Tobacco Research. It's got
5 OSS000001. And it will be
6 through 35. When we discuss
7 these, we will identify them
8 by specific numbers.

9 MS. ALEXANDER: I would
10 note that Mr. O'Shea cannot
11 be the one to authenticate
12 these, since they were produced
13 by another party. That's not
14 an objection. It's a note.

15 Q What is your full name, please, sir?

16 A My name is Simon O'Shea. I guess I am Jr.

17 Q Do you have a middle name?

18 A Francis.

19 Q What is your home address, Mr. O'Shea?

20 A [DELETED]

21 Q What is your telephone number?

22 A [DELETED] There is his prefix. Now, [DELETED]

23 Q Do you have a business address, Mr. O'Shea?

24 A Yes.

25 Q What is this?

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17

1 A 420 Lexington, Avenue, New York City 10017.

2 Q And your business telephone number, please?

3 A 697-5600.

4 Q How long have you lived at this address you

5 have just given us?

6 MS. ALEXANDER: Home address?

7 MR. HANKS: Yes, home address.

8 A I believe since 1962.

9 Q Do you have plans to remain living there for

10 the immediate future?

11 A I -- I own the property.

12 Q Okay. What kind of business are you in?

13 A I am a Senior Vice President of Hill &

14 Knowlton, Inc. We serve -- practice as public

15 relations and public affairs counsel.

16 Q How long have you worked for Hill & Knowlton?

17 A I first joined Hill & Knowlton in 1958. My

18 employment was interrupted by a period outside

19 the firm. I rejoined the firm in 1973. And

20 have been employed continuously since then.

21 Q Mr. O'Shea when did you first learn that we

22 wanted to take your deposition?

23 A Well, sometime within -- oh, sometime this

24 fall, summer. I don't recall the precise

25 date.

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1 Q Within the last few months?

2 A Yes.

3 Q Who contacted you about that?

4 MS. ALEXANDER: What's the
5 purpose of these questions?

6 MR. HANKS: Well, it's going
7 to go to my problems of Mr.
8 O'Shea's counsel participating in
9 the deposition, but I think it's
10 relevant. I am going to go forward
11 with it.

12 MS. ALEXANDER: You can
13 proceed a little while. I may have
14 an objection at some point.

15 MR. WATKINS: I suggest you
16 object to the Master. That's the
17 way to handle this.

18 A Frankly I don't know the exact name, but I
19 probably have secretarial records. Someone
20 called me and asked to speak to me regarding
21 a deposition in this case. And that was
22 what happened.

23 Q Okay. Was it lawyer that called you?

24 A It was a lawyer.

25 Q Was it the lawyer for Covington and Burling?

1 A No. And I therefore, you know,

2 didn't make any response at that point.

3 Q You did not make any response to the call to
4 your office?

5 A To the request that I call Covington Burling
6 to find out if there was indeed an action.

7 Q Did you talk to this first lawyer that
8 called your office? Did you talk to him
9 or her on the phone?

10 A Yes, I merely said that I wouldn't have any
11 comment at the moment.

12 Q I see. Did you know who that lawyer
13 represented?

14 A No, I did not. And that was the reason.

15 Q So then what did you do after that call?

16 A Then I called John Denniston at Covington &
17 Burling.

18 Q What did you tell them?

19 MS. ALEXANDER: At this point
20 we will interpose this objection as
21 to attorney-client privilege. The
22 privilege in question is that of
23 Mr. O'Shea.

24 MR. HANKS: Your Honor, I'm
25 going to -- as I usually do, I am

1 going to take exception to this
2 objection. I think we are entitled
3 to know this. I don't think it's
4 in connection with the rendition
5 of legal services to Mr. O'Shea,
6 doesn't have anything to do
7 with this.

8 MS. ALEXANDER: Mr. O'Shea is
9 a client of Covington & Burling. He
10 called us in connection with with
11 the representation we are doing
12 here today. I can see a clear
13 possible case for privilege.

14 THE MASTER: It will be
15 sustained.

16 MS. ALEXANDER: That means you
17 don't have to answer.

18 A I know.

19 Q Have you given a deposition before?

20 A Yes.

21 Q When was that?

22 A Well, I think the last one that I gave was I
23 think in HECLA in a merger case.

24 Q You have given more than one deposition?

25 A Yes, sir.

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1 Q Have you given any depositions in cases
2 involving tobacco related matters?

3 A No, I haven't.

4 Q This will be your first?

5 A Right.

6 Q Mr. O'Shea, before your contact with John
7 Denniston at Covington & Burling --

8 A Yes.

9 Q Had Covington & Burling ever represented you
10 before?

11 A No, because I have never, as you have pointed
12 out, been called in one of these cases?

13 Q You have given a deposition before, haven't
14 you.

15 A I have.

16 Q Did you think to call you Covington &
17 Burling about those depositions?

18 A When I am called into a case, this is
19 involving work I did on behalf of client.
20 Naturally I check with the client's attorney.

21 Q Who is the client? What work are you doing on
22 behalf of the client? What client are you
23 talking about?

24 A When I am called on behalf of HECLA, I call
25 their attorney.

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1 Q Okay.

2 A Fairly normal procedure.

3 Q Again, I don't understand why you
4 called Covington & Burling?

5 A Because I was their employee.

6 Q You know that they represent The Tobacco
7 Institute?

8 A No, I don't know that.

9 Q Okay.

10 Q Who at Covington & Burling have you talked to
11 about this deposition?

12 A Ms. Alexander.

13 Q Okay. and Mr. Denniston?

14 A Yes, sir.

15 Q Who else have you talked to about this
16 deposition?

17 MS. ALEXANDER: You mean who
18 else at Covington & Burling.

19 Q Who else anywhere?

20 A Except to inform people at Hill & Knowlton I
21 have not talked to anyone.

22 Q Okay. Just briefly give me your educational
23 background, please, sir?

24 A Well, I went to grade school in Michigan, to
25 high school there. And I began but did not

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1 Q complete college.

2 Q Where did you begin your college?

3 A I won a scholarship from high school to
4 St. Louis University.

5 Q How far did you go in college? Let me ask you
6 this: Is St. Louis University the only
7 place you have gone to college?

8 A No, I subsequently went to Michigan State
9 and I subsequently took some courses at
10 Wayne State University in Illinois during my
11 college.

12 Q How far were you towards your degree when you
13 left college for the last time?

14 A I don't know. You know, I don't recall.

15 Q It's been sometime back?

16 A Yeah, it's a while ago.

17 Q What were you studying in college?

18 A I was a philosophy major.

19 Q Was that your major at each of these
20 colleges?

21 A No. I went to college and the scholarship I won
22 was to participate in something called the
23 Readers Institute. And--

24 Q So are you taking courses related to
25 journalism?

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1 A No, it was creative writing.

2 Q Okay. What year did you -- what was the
3 last college that you have been to?

4 A I have taken some courses at The New School.

5 Q What new school?

6 A It's on down in the Village. It's a you
7 know--you know I have taken some evening
8 school.

9 MS. ALEXANDER: The New
10 School, capital letters.

11 A For social research.

12 Q I am from Texas, Mr. O'Shea. I am behind.

13 A I am from Michigan. I am, too.

14 Q The last -- well, before you went to the
15 New School, NYU was the most recent of these
16 colleges that you have listed that you have
17 attended; is that right?

18 A Yes.

19 Q When did you leave NYU?

20 A Well, I took night courses there. I don't
21 know.

22 Q Can you give me the approximation what year?

23 A Probably sometime in the sixties.

24 Q So you were attending NYU after you had gone
25 to work for Hill & Knowlton?

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1 A Sure.

2 A And I was --.

3 Q What kind of scientific or medical training,
4 if any, have you had?

5 A Well, a lot of--practical reading. Actually
6 in school, as I say, I majored in philosophy.
7 And I had a good deal of course work in
8 psychology.

9 Q Have you taken any courses of any kind, formal
10 or informal, specifically related to scientific
11 matters or medical matters?

12 A Not to medical matters.

13 Q Scientific matters, then?

14 A I don't know how you define science, but you
15 know, in general what's going on.

16 Q Has that come from on-the-job experience
17 mainly?

18 A From both that and my reading.

19 Q Have you received any training related to
20 tobacco use and disease?

21 A No, I don't recall that being in any
22 curriculum.

23 Q You didn't go to any short courses?

24 A No, I didn't have to go to any short courses.

25 Q Did you know something about it?

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1 A I knew something about it.

2 Q Did that come from your personal reading?

3 A I don't know what it came from, but I -- you
4 know.

5 Q We might cover it as we go along, then. Was
6 your employment with Hill & Knowlton in 1958
7 the first job that you had that you held?

8 A No, it wasn't.

9 Q What was your first job, please?

10 A Well, the first permanent job, I worked as a
11 court, police, city police reporter for the
12 Clements Daily Monitor Leader.

13 Q Thank you. That was from 1953 to 1956?

14 A I will have to rely on your memory.

15 MS. ALEXANDER: It is not Mr.
16 Hanks' memory but a document he
17 seems to be reading from.

18 Q I didn't realize this was on this application,
19 but we will go over this in a minute. My
20 memory isn't very good.

21 A Mine isn't good.

22 Q What is it you remember in connection with the
23 job the Pontiac area, United Fund?

24 A That's correct.

25 Q You did fund raising for them?

1 A And public relations.

2 Q Your next job was with Chrysler Corporation?

3 A That's correct.

4 Q Ended May 1958 or thereabouts?

5 A Yeah, I would have to recollect the date --

6 May -- yeah, sometime in '58 I guess.

7 Q After your Chrysler job, was your next job

8 with Hill & Knowlton

9 A Yes. I -- you may recall the auto industry

10 encountered some difficulties that year,

11 and I was laid off in the recession.

12 Chrysler kindly lent me their office in

13 New York and I had previously been in contact

14 with Hill & Knowlton

15 Q The work -- what did you do for the Chrysler

16 Corporation just very briefly?

17 A Principally, I specialized for them in

18 community relations, did some public affairs

19 work on tax laws. And--

20 Q I am going to hand you an exhibit that we have

21 marked. It's part of Exhibit 1. It begins

22 with page number 0-1. Goes through 0-3. Take

23 a look at that, please, sir, and tell me if

24 you know what it is. Have you had an

25 opportunity to look over the exhibit?

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1 A Yeah, I have scanned through there

2 Q Do you know what it is?

3 A Well, you know, I know what it purports to be.

4 It seems to be the first job application I

5 ever filled out. It appears to be the

6 application for Hill & Knowlton's.

7 Q For Hill & Knowlton, is that correct?

8 A That's correct.

9 Q On the last page of the exhibit there is a line
10 for signature of the applicant. Is that your
11 signature?

12 A Appears to be.

13 Q You recognize your own signature, don't you?

14 A Yeah.

15 Q And that's yours, isn't it?

16 A I don't know. It's a copy on a 25-year-old
17 document.

18 Q Well, you filled out an application with Hill
19 & Knowlton, didn't you?

20 A This -- yeah. Go on.

21 Q Isn't this -- you say it appears to be. This
22 is a copy of the application you filled out
23 with Hill & Knowlton?

24 A Yeah.

25 Q Okay. The date of this application is May 15,

1 1958; right?

2 A Right.

3 Q Under this part where it says "Position
4 Desired" it says "Writer Assistant, LBI account."
5 Why don't you tell me what that is.

6 A What it is?

7 Q What is Writer Assistant, LBI account?

8 A Well, Writer Assistant for the Licensed
9 Beverage Industry.

10 Q Okay. At the bottom of the page there's a
11 line says, "Who referred you to us concerning
12 employment?" and it has the name of Owen
13 Reagan. Who is Mr. Owen Reagan?

14 A I don't have the weirdest idea.

15 Q Okay. You don't remember that name?

16 A No.

17 Q Again, at the bottom of this first page --
18 it's very difficult to read this copy, I
19 understand that, but it looks like it says
20 interviewed by Vern? Do you know that next
21 name after that Vern?

22 A Boxsell.

23 Q Then John Hill?

24 A Yeah.

25 Q And then "Etc.".

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1 A Right.

2 Q They were -- who were they?

3 A Well, Vern is -- was the Licensed Beverage
4 Industry account executive. John Hill was the
5 founder of the firm. I believe both are dead.

6 Q Do you know who the "Etc." refers to?

7 A Yes. I saw Bert Goss and Mr. Cassidy and, you
8 know -- had the usual work-up.

9 Q Bert Goss and Cassidy, they were both with
10 Hill & Knowlton?

11 A Yes, they were both senior management at that
12 time.

13 Q I am not going to embarrass you by discussing
14 some of these letters that praise your work --

15 A By all means don't.

16 Q -- during your prior employment. There are
17 some in this exhibit. Did you get the Writer
18 Assistant job?

19 A Yes.

20 Q And was this within a few weeks of this
21 application of May 15?

22 A I don't know that. I know pretty well, I
23 must have gotten the job at approximately this
24 time. We were married in June and my wife
25 complained mightily about having to move on

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1 her honeymoon, so --

2 Q Are you still married, Mr. O'Shea?

3 A Yes, we are.

4 Q To the same woman, I take it?

5 A Yes.

6 Q Do you have some children?

7 A No, we don't.

8 Q You just gave me an answer to a question and I
9 have forgotten it. You said you did get the
10 job as Writer Assistant?

11 A Yeah.

12 Q How long did you work in that position?

13 A Well, my recollection is not precise, but -- I
14 worked, you know, at least three years on that
15 account. I think about three years. And as a
16 matter of fact, had a certain amount to do
17 with the scientific program of that
18 organization.

19 Q Licensed beverage industry --

20 A Yes.

21 Q -- had a scientific program?

22 A Yes, they had a Scientific Advisory Committee.

23 Q Very briefly, what scientific matters did that
24 deal with?

25 A Alcoholism, the effect of drinking on human

ALICE A. JANETSKY, CSR, RPR

1 physiology.

2 Q Okay. You also went to work in 1958 for the
3 Council for Tobacco Research's predecessor,
4 did you not, the Tobacco Industry Research
5 Committee?

6 A In '58?

7 Q Yes, sir.

8 A No.

9 Q You have worked for the Council for Tobacco
10 Research, haven't you?

11 A I worked for Tobacco Research.

12 Q Tobacco Industry Research Committee?

13 A Yes.

14 Q When did you work for them?

15 A Well, it was -- I suppose about 19 -- let's
16 see--it probably was '67 but, you know, I
17 would really have to refresh my memory to
18 fix that date.

19 Q I have got some things I will go over with you
20 in a little while and they may refresh your
21 memory. How long did you work for this
22 Tobacco Industry Research Committee?
23 I am going to call it ti if you will
24 recognize the acronym. How long did you work
25 for TIRC?

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1 A Yes. Until I began working under contract for
2 Covington and Burling. I think that's about
3 '67 or something like that.

4 MR. HANKS: Mark that as
5 Exhibit 2, please.

6 (O'Shea Exhibit No. 2 was
7 so marked for identification by
8 the reporter, and a copy is
9 attached hereto.)

10 Q Exhibit No. 2 is something that the Council
11 for Tobacco Research produced in the Rogers
12 and Duke cases. It's got an
13 identification number on it, CTR2088 -- and it
14 looks like a 6. It's part of another
15 document; it was part of a CTR history prepared,
16 I believe, by Dr. Hockett. At the top of the
17 page it's got a caption: "Staff Appointments,
18 1954 through '84."

19 MS. ALEXANDER: Dale, before
20 you get into it, this is in a
21 sense not my business. I know
22 there is some inform protective
23 order or dissemination agreement.
24 You may be well within it. I want
25 Mr. Hines to have the chance to

1 address that.

2 MR. HINES: The documents
3 produced by the CTR that
4 counsel alluded to using those
5 in other depositions in the
6 same case, of course, the
7 documents will not be disseminated
8 to the public.

9 MR. HANKS: They are under the
10 same protective order in the Rogers
11 case?

12 MR. HINES: Yes, sir.

13 A Are we done with this?

14 MR. HANKS: Yes, sir. This
15 document has some columns.

16 MS. ALEXANDER: Could I have
17 just a chance to look it over?

18 MR. HANKS: Go ahead.

19 Q Have you looked at that Exhibit No. 2, sir?

20 A Yes.

21 Q You have never seen this before, have you?

22 A No, I haven't.

23 Q Anyway, it says, "Staff Appointment 1954
24 through 1984" and it's got your name on it?

25 A Yes.

1 Q And under the title it's got Assistant
2 Executive Director, and it says, "Term of
3 Employment." It says you began 5/18/1958 and
4 you ended your employ with them on November
5 30, 1966.

6 MS. ALEXANDER: Could we just
7 check it? The document speaks for
8 itself. I don't particularly
9 object so long as what you are
10 reading is accurate.

11 MR. HANKS: Go ahead and take
12 a look at it.

13 MS. ALEXANDER: No objection.

14 MR. HANKS: Can I go ahead with
15 the question?

16 MS. ALEXANDER: Sure.

17 Q I have the rest of this document with me in a
18 box.

19 A Okay.

20 Q I can dig it out in a minute if I need to. I
21 will repeat: This came from a document that
22 was a CTR history and so I am representing
23 that this means that you were employed or says
24 you were employed by CTR or its predecessor.
25 If need be I will pull the document out to

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BUTLER CTR 005106

1 show it.

2 MS. ALEXANDER: Objection. Is
3 this a question?

4 MR. HANKS: I am explaining
5 something to him. I am going to
6 ask a question now.

7 MS. ALEXANDER: I would note
8 your explanation has no status
9 either as testimony or anything
10 Mr. O'Shea necessarily knows.

11 Q I know that. That's why I am saying he
12 doesn't know it.

13 MR. HINES: Mr. Hanks, if I
14 may make a comment. I have some
15 recollection in another context
16 having nothing to do with Mr.
17 O'Shea, someone telling me,
18 I am pretty sure you in reference
19 to a document listing when people
20 started and finished, that there
21 were some errors on it.

22 Again, it was having
23 nothing to do with Mr. O'Shea. I
24 have that in the back of my mind I
25 personally have no information as

1 to Mr. O'Shea's starting.

2 MR. HANKS: It wasn't me told
3 you it had errors, was it?

4 MR. HINES: I doubt it.

5 Q Anyway, you disagree with that history, right?

6 A Yes, Bob is a first-rate chemist, but I was
7 not a ver good chemist when I went to work for
8 LBI. It was the sole representation I had.
9 O work or I l. about I I it was at sole

10 MR. DYM: Will you get the rest
11 of the document?

12 MR. HANKS: It was after 1984.

13 MR. HINES: Do you know what
14 it's a part of?

15 MS. ALEXANDER: It's part of
16 a history of CTR.

17 MR. HANKS: {H AOEUPB}

18 MR. HINES: That's the
19 reference of the historian?

20 A I couldn't have worked for two people
21 at one time.

22 Q The end is dated November 1966. Does that
23 look right?

24 A I have said it seemed to me the sixties. It
25 seems we got our apartment in Washington in

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BUTLER CTR 005108

1 '67, so it must have been sometime around then.

2 Q I am going to hand you Page 4 of this Exhibit

3 1. Well, Pages 4 and 5 of this Exhibit 1.

4 And you take a look at it and tell me if you
5 have ever seen something like that before?

6 A No, I haven't.

7 Q Okay.

8 Q It says what it is on it. Anyway, it says
9 Daily Absentee Record. It's got your name
10 on it: O'Shea, Simon P., date of employment
11 May 9, 1958. I am going to ask a question
12 about it, Margaret. Were you employed by Hill
13 & Knowlton on May 19, 1958?

14 A I guess.

15 MS. ALEXANDER: Wait a minute,
16 now. That illustrates exactly why
17 this proceeding is objectionable.
18 Will, he doesn't know what the
19 document is. He said he can't
20 identify it. It has to stand
21 alone and independently. If you
22 want to ask him questions from
23 his memory, that's fine. I object
24 to questioning him on a document he
25 couldn't identify.

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BUTLER CTR 005109

1 THE MASTER: I want to speak
2 here a moment. I think that
3 counsel certainly out to have the
4 right, as he promised earlier, to
5 to hand the witness documents
6 and ask whether or not they refresh
7 your memory and I take it that
8 that's the effort that's being
9 made. And the objection that the
10 document has to stand on its own
11 footing since he can't possibly
12 identify it, he is simply trying
13 to refresh the memory of the
14 witness.

15 MS. ALEXANDER: Judge, the
16 reason I made the comment Mr.
17 O'Shea seemed to be simply
18 accepting what the document said.
19 That is the objection. He should
20 not be fed information from a
21 document. If he recollects, fine.

22 A The document has no identification.

23 Q It has some identification. It says,

24 "Produced by the Council for Tobacco

25 Research," That's some identification. But

1 anyway, when I ask you a question about
2 information on this document you don't
3 have to accept that. I am asking
4 you whether it's true or not. If you
5 disagree, just tell me.

6 A It's your presumption that was the Council's
7 document.

8 Q It was produced by the them, and I don't
9 know --

10 MS. ALEXANDER:

11 Is it fair to say you want
12 to know whether the document
13 refreshes his recollection?

14 A That I worked for the Council? No.

15 Q Okay. Who were you working for Mr. O'Shea in
16 1964?

17 A '64? Well, let's see. I began at
18 the---58--my memory is not precise on those
19 dates. If you would like I would tell you the
20 chronology and then we could try to establish
21 it.

22 MS. ALEXANDER: He's going to
23 ask you the questions. He may
24 do it, but let him ask you the
25 questions.

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BUTLER CTR 005111

1 Q I think we have gone through the chronology
2 already.

3 A No, I mean within the period from '58 to '67,
4 you know, I don't recall precisely the dates.
5 But, you know, during that period, I had three
6 different jobs, W-2 employers.

7 Q Okay. Explain it to me.

8 A Okay.

9 MS. ALEXANDER: Why don't you
10 put the question to him.

11 Q Would you please explain it to me?

12 MR. WATKINS: Question mark
13 after that.

14 A First of all, I went and worked for Hill &
15 Knowlton on premises with this Licensed
16 Beverage Industries. My recollection is that
17 that was approximately three years.

18 Q Okay.

19 A I then came back to Hill & Knowlton's offices
20 two blocks away in the Mobil Building, and I
21 worked for less than a year on the tobacco
22 industry account.

23 Q Okay. Let me stop you. On LBI work you
24 said "On premises" at the Licensed Beverage
25 Industry?

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BUTLER CTR 005112

1 A Industry, yeah, I think.

2 Q You were getting your paycheck at that time?

3 A From Hill & Knowlton.

4 Q And that takes us up to approximately 1961 --
5 1958 -- about three years?

6 A Yeah, I think so.

7 Q And then you went back to Hill & Knowlton's
8 premises?

9 A I can see we are going to have to straighten
10 out the dates at some point.

11 MS. ALEXANDER: You let him
12 ask the questions. You just answer
13 them.

14 MR. HANKS: He's helping and I
15 need help.

16 MR. WATKINS: Do you want to
17 gag him?

18 MS. ALEXANDER: No, I don't.
19 I want him to ask him questions.

20 Q When you went back on Hill & Knowlton's
21 premises --

22 A Yes.

23 Q -- in about 1961, you worked for less than a
24 year on a tobacco industry account, you say?

25 A Yeah.

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BUTLER CTR 005113

1 Q Okay.

2 A I mean that's, you know, my vague description.

3 Q Who was your supervisor with respect to this
4 tobacco account?

5 A Well,-- Carl Thompson.

6 Q Were there any other people at Hill &
7 Knowlton working on this tobacco industry
8 account?

9 A Yes, it was a large matter; yeah.

10 Q I know you might not recall them all, but tell
11 me the names of the ones you recall.

12 A I don't recall them all. I don't recall
13 hardly any of them. I remember Jim
14 Blush. That's about it.

15 Q What did you do with respect to that account?

16 A Well, I principally recall reading scientific
17 literature and writing abstracts of it.

18 Q Okay. Were you getting paid by Hill &
19 Knowlton at that time?

20 A Certainly.

21 Q Where did you perform the actual work that you
22 did?

23 A In -- what is the address? Anyhow, in the
24 Mobil Building.

25 Q At Hill & Knowlton's offices?

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BUTLER CTR 005114

1 A In the main offices, yes.

2 Q How did you get the literature that you read?

3 A I imagine it was given to me. I didn't go and
4 get it.

5 Q How did it get to your office there?

6 A Someone said, "Here, abstract this."

7 MR. WATKINS: Start reading.

8 Q Would you say the tobacco industry account,
9 was it an account for a particular cigarette
10 manufacturer?

11 A That really, I was a junior personnel, and
12 I don't know who the client was of record.

13 Q Okay. Were there other people at Hill &
14 Knowlton reading these journals, literature,
15 and abstracting in the same fashion that you
16 were?

17 MS. ALEXANDER: He did not
18 testify it was a journal in
19 particular, I believe.

20 Q What were you reading?

21 A Usually I had some type of copy -- I think it
22 was pre-Xerox days -- of a scientific article.

23 Q From a scientific journal?

24 A Yes, normally from a medical journal.

25 Q Were there any other people at Hill & Knowlton

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1 doing the same thing that you were at that
2 time?

3 A Not that I recollect, but there may have been.

4 Q What did you do with the abstracts?

5 A Gave them to Carl Thompson.

6 Q And what did Carl Thompson do with them?

7 A I have no idea.

8 Q Did you ever see them again after you gave
9 them to Mr. Thompson?

10 (At this time Mr. Hartzell
11 entered the deposition and was
12 present for the remainder of the
13 deposition.)

14 A Some of the them.

15 Q Where did you see some of them?

16 A They were in a -- we had a periodical called
17 TOBACCO AND HEALTH ABSTRACTS, as I recall.

18 Q Whose periodical was that?

19 A I have no idea. It was Hill & Knowlton's, I
20 guess.

21 Q Hill & Knowlton prepared a periodical called
22 Tobacco and Health Abstracts?

23 A I don't know. I wrote abstracts and I
24 remember they were published in that.

25

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BUTLER CTR 005117

1 MS. ALEXANDER: Would this be
2 a moment for us to generally take a
3 break?

4 MR. HANKS: I am not. I am
5 going to go right on.

6 Do you feel the need for a
7 break? Anytime you want to; I am
8 very easy to get along with.

9 MS. ALEXANDER: Is that
10 statement on the record? Mr. Hanks
11 says he's easy to get along with.

12 MR HANKS: Please mark this
13 as our next exhibit.

14 (O'Shea Exhibit No. 3 was so
15 marked for identification, and a
16 copy is attached hereto.)

17 Q Mr. O'Shea I am going to hand you Exhibit No.
18 3; and tell me if you have seen this before or
19 something very similar to it?

20 MS. ALEXANDER: Have a minute
21 to look at it.

22 A I doubt I saw this one. It's dated May, June
23 '58.

24 Q It's got a title "TOBACCO AND HEALTH." Tell
25 me, is this what you were referring to just

1 previously when you said "TOBACCO AND HEALTH"
2 abstracts?

3 A Uh-huh. Well, this is the -- the abstract
4 itself that I produced very probably at some
5 later date would be published in this.

6 Q That's the publication that they were
7 published in, right?

8 MS. ALEXANDER: If you know.

9 A As he pointed out, it's 1958? For example, I
10 don't recall that heading.
11 Because I think it was different in the time I
12 worked for it.

13 Q Okay? During the break I might look and see
14 if I have something from the early 1960's.

15 A Uh-huh.

16 Q We can talk about that?

17 A And I didn't produce anything in this
18 publication.

19 Q Because it's a 1958 publication?

20 A Yes, right. And I don't know - - enough.

21 Q Let's use this Exhibit 3 just for a minute and
22 then I will leave it. But on the first page
23 of it on the lefthand corner it's got a column
24 says Sir Ronald L. Fish, is underlined, and
25 gives us his views on his research status. Is

1 this the type thing you were preparing at Hill
2 & Knowlton?

3 A I don't know. I don't know.

4 MS. ALEXANDER: Object to the
5 question. He doesn't know -- What
6 do you mean by the type thing?
7 It's not characterized in a way he
8 can understand.

9 Q He testified he prepared abstracts. I know he
10 didn't prepare this particular one -- it was
11 before he worked there. Is this the type--

12 MS. ALEXANDER: Wait a minute.
13 Again the objection is, perhaps I
14 might characterize the objection as
15 vagueness. He is asking us to make
16 a comparison, was what he did like
17 what is here or -- I don't know
18 what the basis for his comparison
19 is. I object to the question.

20 A I can tell you what I did.

21 Q Well, go ahead.

22 A I got a scientific article and prepared an
23 objective abstract.

24 An abstract is a scientific work. It means
25 that you -- you try to convey exactly what

1 happened in the article.

2 Q Okay. How long were your abstracts?

3 A They usually ran not more than two pages.

4 Q Okay. On this particular Exhibit No. 3 it
5 says, "Published by The Tobacco Institute,
6 Inc." Were the publications that carried your
7 abstracts, at a later date, was that published
8 by the Institute?

9 A I don't know.

10 MS. ALEXANDER: Object to the
11 question. Your statement, that
12 that publication is published by
13 Tobacco Institute, Inc. has
14 absolutely nothing to do with the
15 question you actually had asked,
16 whether his abstracts were
17 published by The Tobacco
18 Instititue, Inc. I object to the
19 form. It feeds to the witness
20 something unrelated to the question
21 you are actually asking him.

22 Q If you can answer my question?

23 A I didn't hear the question at this point.

24 Q Okay. Were the TOBACCO AND HEALTH
25 publications that carried some of your

1 abstracts that you have talked about, was that
2 published by the The Tobacco Institute?

3 A I previously did testify that I do not recall
4 the heading, the letterhead on that
5 publication and do not know what it looked
6 like at the time that I wrote abstracts.

7 Q Okay. When you abstracted articles during
8 this period in about 1961, did you keep copies
9 of your abstracts?

10 A I doubt it very much. No, I didn't keep
11 copies of an abstract.

12 Q Other than seeing them or some of them in
13 TOBACCO AND HEALTH type publications, have you
14 seen those abstracts anywhere else?

15 A I haven't seen anything from 19 whatever it
16 was.

17 Q Okay. When we started the depositions I
18 forgot to ask you this: Did you look over any
19 documents to prepare for this deposition?

20 A I consulted with my attorney.

21 Q Did you look over any documents to prepare for
22 this deposition?

23 MS. ALEXANDER: You can answer
24 that.

25 A Yeah. Yes, yes, I have seen the employment

1 documents.

2 Q The ones we are going over, you have
3 looked at them before?

4 A I did not look at -- I did not see any copies
5 of the publication that we are discussing at
6 the moment.

7 Q The employment documents though that we
8 discussed, you saw those?

9 A Yes, sir.

10 Q Did you look at anything else?

11 A Yes.

12 Q Tell me what you looked at?

13 A They were all Council records. Well, they
14 all, they are all records that I was told were
15 produced by the Council.

16 MS. ALEXANDER: If you want to
17 short-cut, this is essentially one
18 that was, which was produced from
19 the personnel file.

20 Q Okay did you look at anything else?

21 A No. I did a search for the employment
22 contract that the notice requested and I did
23 not find it.

24 Q Okay. So you saw that deposition notice?

25 A Yes, I got one.

1 Q Go ahead and put this copy of the deposition
2 notice as the next exhibit.

3 (O'Shea Exhibit No. 4 was so
4 marked for identification, and a
5 copy is attached hereto.)

6 Q Did you read any depositions in preparation
7 for this deposition?

8 A I did not.

9 Q During this period in 1961 about, while you
10 were working for Hill & Knowlton, did you do
11 anything other than read articles and abstract
12 them?

13 A I am sure I did, but I don't recollect what it
14 was.

15 Q That was your primary function.

16 A That's correct. I was, you know, I was
17 starting out.

18 Q Was there enough work to keep you busy on
19 that?

20 A I was busy, yes.

21 Q Did you do a lot of the abstracting, let me
22 ask you that: Can you give me an estimate of
23 how many articles you abstracted?

24 A I can't give you that.

25 Q Did you abstract articles every day?

1 A You know--I, under --

2 Q Did there come a time --

3 A Actually that's the only activity I can
4 recall.

5 Q Okay.

6 A But I am sure I did a lot of the other things.

7 Q Did you do any work outside the office of Hill
8 & Knowlton?

9 A No. I don't believe so. I think it was on
10 premises all the time.

11 Q Were you living in New York at that time?

12 A Yes. Renovating a house as I recall.

13 Q You testified a little earlier that you did
14 that for under, a little less than a year?

15 A Yeah.

16 Q When you stopped doing that particular
17 assignment, did you continue working for Hill
18 & Knowlton?

19 A No.

20 Q Okay.

21 MS. ALEXANDER: If you are
22 about to move onto the next page,
23 is this a good moment for us to
24 take a five-minute break?

25 MR HANKS:: Just a minute and

1 I will finish.

2 Q Did you leave Hill & Knowlton voluntarily?

3 A Yes.

4 Q During that time in about 1961, did you ever
5 meet any lawyers representing the tobacco
6 industry?

7 A No. At least to my recollection I didn't.

8 Q Did you meet any of the lawyers representing
9 The Tobacco Institute?

10 A No.

11 Q Did you deal with lawyers at all?

12 A I didn't deal with lawyers. And I don't
13 recall any -- you know I was a back-room
14 operator at that point.

15 Q Did you deal with any representatives of
16 cigarette manufacturers?

17 A I saw Bowman Gray once.

18 Q Once?

19 A Yeah.

20 Q Did you see him there at Hill & Knowlton?

21 A Yeah.

22 Q You were introduced to him I suppose?

23 A No, sir.

24 Q How did you know it was him?

25 A Someone told me.

1 Q Did you know who he worked for?

2 A I knew he was president of Reynolds.

3 Q Did you meet any other of the cigarette
4 manufacturers executives or representatives at
5 that time?

6 A I didn't meet him.

7 Q Okay?

8 A But I saw him.

9 Q Okay.

10 A I don't recall seeing any others.

11 Q Who told you how to abstract these articles?

12 A Probably --

13 MS. ALEXANDER: I would
14 object. There is no foundation for
15 that. You can correct that easily.

16 Q Did someone give you instructions on how to go
17 about abstracting these articles?

18 A No, they didn't. They told me that they
19 wanted abstracts and I was familiar with what
20 an abstract was.

21 Q Who were they?

22 A Thompson probably. Don't know.

23 Q Before you began that abstracting work had
24 that operation been going on at Hill &
25 Knowlton?

- 1 A I don't know that it had.
- 2 Q Okay. Did you see any abstracts that you
- 3 didn't do?
- 4 A I think that other people were producing them
- 5 at the time but I don't know.
- 6 Q You don't know whether they were doing it
- 7 before you?
- 8 A I don't recollect. It's not just that I don't
- 9 know I don't know all the details.
- 10 Q When you don't know, do you mean you don't
- 11 recollect? Same thing?
- 12 A Same.
- 13 Q Was Hill & Knowlton doing work for the tobacco
- 14 industry before you began on the account in
- 15 about 1961?
- 16 A I don't know when, but the account team was in
- 17 existence when I came over and joined in
- 18 1958.
- 19 Q Yes, no 1958.
- 20 A In '58 I went to work for the Licensed Beverage
- 21 Industry.
- 22 Q I misunderstood. You said when you came over
- 23 and joined them, I thought you meant when you
- 24 joined Hill & Knowlton?
- 25 A No, when I came from the remote, two blocks

1 away, to the Mobil building, there were people
2 sitting there working.

3 Q On the tobacco account?

4 A Yes.

5 Q Do you want to take a break now; is that okay?

6 THE MASTER: Yes. Recess.

7 (There was a brief recess.)

8 MR. HANKS: Are we ready to
9 start?

10 Q Mr. O'Shea, I didn't ask you this a moment
11 ago. I think I forgot. These articles that
12 you abstracted --

13 A Yes.

14 Q -- at Hill & Knowlton in the 1961 period,
15 what were the subject matters of them?

16 A Well, they varied widely. Some of them were
17 on the statistics. But they -- on pathology,
18 things like that. They bore in one way or
19 another on the then current discussion going
20 on about the effects of smoking on health.

21 Q They were all related to smoking and health
22 issues?

23 A They weren't all related -- I mean they were
24 on such allied questions as standards in
25 animal experimentation, Statistical problems

1 in studying causes in a population. You know,
2 they had a much wider range than -- than the
3 controversy that ultimately developed.

4 Q Did any of them have to do with matters
5 bearing on psychiatry or psychology?

6 A I don't recall, but it wouldn't be
7 inconceivable.

8 Q You just abstracted whatever they gave you; is
9 that right?

10 A That's correct.

11 Q You didn't ask for any particular ones
12 yourself?

13 A No.

14 Q Okay. When you left Hill & Knowlton, what was
15 your next employment?

16 A The Tobacco Industry Research Committee was --
17 I was asked if I would accept employment with
18 the Tobacco Industry Research Committee.

19 Q That's why you left Hill & Knowlton because
20 they asked you to go to work for TIRC?

21 MS. ALEXANDER: Who is they?

22 MR. HANKS: I am going to ask
23 that in a minute.

24 MS. ALEXANDER: I am
25 objecting. The question is

1 unclear.

2 MR. HANKS: Did you leave Hill
3 & Knowlton because someone at TIRC
4 asked you to go to work for them
5 for TIRC.

6 A My recollection is that Dr. Little asked me to
7 join them. And I was a good Michigander, so I
8 did.

9 Q Did you know Dr. Little before this incident?

10 A Yeah, I met him during this period.

11 Q During the 1961 period?

12 A Yeah.

13 Q Where did you meet him?

14 A I don't recall exactly.

15 Q Okay. Did he ever visit Hill & Knowlton's
16 offices?

17 A Yes. He did occasionally.

18 Q He was scientific director for the TIRC,
19 wasn't he, at that time?

20 A That's correct.

21 Q What did he ask you to do when this discussion
22 took place?

23 MS. ALEXANDER: What
24 discussion are we talking about?

25 MR. HANKS: About going to

1 work for TIRC.

2 MS. ALEXANDER: Was there a
3 discussion? Did you establish that
4 there was?

5 MR. HANKS: There must have
6 been if he asked him to go to work
7 there with him.

8 Q What was the nature of the conversation with Mr.
9 Little?

10 A I don't recall the nature of the conversation
11 but the -- he said he would like me to join
12 him. And that's what I recall.

13 Q Up until this time you had never received, or
14 had you ever received any money from TIRC?

15 A Why, no.

16 Q No?

17 A No.

18 Q Okay. What position were you hired in at
19 TIRC?

20 A I don't know that there was a formal
21 definition of position. But I think about --
22 Well, I don't think there was a formal
23 definition.

24 Q Who was your immediate superior?

25 A It was kind of a two-headed organization.

1 Q Okay?

2 A There was an executive director and there was
3 a scientific director.

4 Q Executive director was W. T. Hoyt?

5 A Yes, that's correct.

6 Q But essentially he performed administrative
7 duties? Was he your supervisor while you were
8 at TIRC?

9 A He was -- as I say, it was a two-headed
10 organization.

11 Q Okay?

12 A I felt responsibility to both of them.

13 Q Okay.

14 Q So if this work at Hill & Knowlton on the
15 tobacco account occurred in about 1961 and you
16 worked on it for less than a year, did that
17 refresh your memory that you went to work for
18 TIRC in about 1962?

19 A You know--I--you know--I would like to say
20 yes. But without adding it up on a paper, I
21 don't know whether I can. But yes, let's say
22 I got to work there whenever the record would
23 show I did.

24 Q Did your work for TIRC continue continuously
25 from this point when you went to work there

1 until you went to work as a consultant for
2 Covington & Burling?

3 A Yes. I just want to correct one thing. I
4 wasn't the consultant for --

5 Q You were?

6 A -- Covington & Burling.

7 MR. DYM: The word he used was
8 contractor.

9 MR. HANKS: Independent
10 contractor for Covington & Burling.

11 Q Did you work for anyone else during this
12 period that you worked for TIRC?

13 A I don't believe I did.

14 Q Did you do any part-time consulting work for
15 anyone during this period?

16 A No, I was too busy in Democratic reform
17 politics.

18 Q The only paycheck you got from 1962 to about
19 1967 was from TIRC?

20 A Right.

21 Q And your W-2 forms came from them?

22 A I would think so.

23 Q Yes, sir?

24 A I don't recollect. I might have gotten
25 something else, but I don't recall having any

1 other employment.

2 Q Okay.

3 Did your duties remain the same during your
4 entire period there at TIRC?

5 A No, I don't think so. I think --

6 Q They changed?

7 A You know, anyplace you get more jobs to do.

8 Q Why don't you go through and tell me what your
9 duties were when you first went there?

10 A Well, essentially, you know, though I didn't
11 have the title, I was in charge of -- though
12 they didn't do much -- in charge of
13 communications for the organizations. I
14 helped write the annual report, and you know,
15 wrote letters and so on and so forth. I also
16 served as secretary to the scientific advisory
17 committee. Though I think that was -- I
18 didn't start to do that initially, as I
19 recall. It kind of evolved.

20 Q Okay.

21 A In essence if you called TIRC, you know, I
22 would probably get the call and try to get you
23 an answer.

24 Q TIRC then fielded questions from people at
25 that time?

1 A Like scientists would come up and say, "How do
2 I get money here?" And I would say, "I will
3 send you an application."

4 Q What other type of inquiries did you get?

5 A I would remember that as the most common kind of
6 inquiry. People look for money, especially--

7 Q Especially scientists?

8 A Right.

9 MR. WATKINS: Well, things
10 never change do they?

11 Q Did you prepare press releases?

12 A You know, I was trying for -- I don't know.
13 We may have announced grants. We may have put
14 out press releases when we issued the annual
15 report, but I don't -- I don't, you know there
16 was not a huge volume of them, if there were
17 any.

18 Q If there were press releases, did you prepare
19 them?

20 A Well, I don't know who prepared press
21 releases. I probably wrote a draft and the
22 eight other people made corrections.

23 Q The press releases were prepared in-house?

24 MS. ALEXANDER: Object. We
25 have not established whether he

1 prepared releases. The
2 hypothetical questions was, is if
3 there were any press releases.

4 MS. COURINGTON: Releases.
5 Now, we are stating hypotheticals?

6 (O'Shea Exhibit No. 5 was so
7 marked for identification, and a
8 copy is attached hereto.)

9 MR. HANKS: I am going to hand
10 you Exhibit No. 5. And go ahead
11 and take a look at it, and then
12 maybe I will come up with the
13 question.

14 A All right.

15 Q Have you looked over it?

16 A Yeah.

17 Q Do you know what it is?

18 A I don't recall it.

19 Q You don't recall this one?

20 A Yeah. But it looks good.

21 Q It appears to be a press release, doesn't it?

22 A Yes, it does appear to be press releases.

23 Q It appears to be a press release from the
24 Council for Tobacco Research?

25 MS. ALEXANDER: The document

1 is in. It will appear to be what
2 it appears to be.

3 Q It appears to be a press release from the
4 Council for Tobacco Research, doesn't it?

5 A Yeah, says, "Announcement of the Renaming."

6 Q It's got your name up there on the top,
7 doesn't it?

8 A Yes.

9 Q It's got a telephone number over your name,
10 doesn't it?

11 A Uh-huh.

12 Q Do you know what the significance is of your
13 name on the top of that document?

14 A This is the usual form in a press release. I
15 would be the contact person.

16 Q That means, then, if somebody read this and
17 wanted more information, they contact that
18 person?

19 A Yes.

20 Q Did you get contacts from people about
21 releases from the Council for Tobacco
22 Research?

23 MS. ALEXANDER: You are
24 talking about now, generally
25 speaking?

1 Q Yes.

2 A I presume so. As I say, I did not have any
3 recollection, thought perhaps we'd issued
4 them in connection with the annual reports,
5 that kind of thing.

6 Q Okay.

7 A I would presume my name is used as contact
8 person.

9 Q That was one of your duties at TIRC?

10 A To answer his inquiries about a press release
11 I sent out?

12 Q Yeah.

13 A Yes.

14 Q What's the date on Exhibit 5?

15 A March 11, 1964.

16 Q March 11, 1964 you were working for CTR,
17 weren't you?

18 MS. ALEXANDER: If you

19 independently recollect.

20 Q Council for Tobacco Research?

21 A I'd just like to say one thing about time. If
22 we want to sit down and make a chronology,
23 then all my answers about time will be right,
24 you know.

25 Q Can you do that right now?

1 A I can try if you want.

2 MS. ALEXANDER: I will
3 instruct the witness not to write
4 something out at this point.

5 MR. HANKS: Why is that?

6 MS. ALEXANDER: If you want to
7 ask him particularized questions --

8 THE MASTER: How can he
9 respond to a particularized
10 question, when you ask a simple
11 direct question, and then your
12 objection is, "Don't answer it
13 unless you absolutely, particularly
14 recollect the answer to the
15 question?

16 MS. ALEXANDER: I didn't tell
17 him not to answer, and he could
18 answer he doesn't recall. That's
19 an answer.

20 MR. WATKINS: That's the
21 answer she wants.

22 MS. ALEXANDER: That
23 instrument is in the record. It
24 will speak for itself.

25 MR. WATKINS: That's the

1 silliest position --

2 A I worked very briefly for Hill & Knowlton on
3 tobacco.

4 Q Okay?

5 A And I can't tell you within, you know, three
6 months one way or other either whether I was
7 working for Hill & Knowlton.

8 MS. ALEXANDER: If you want to
9 ask precise questions about
10 chronology, ask him.

11 Q I am going to count that you worked for Hill &
12 Knowlton for the tobacco industry for less
13 than a year. Did you not?

14 A Yes.

15 Q You did that about 1961; is that correct?

16 A Yes.

17 Q You worked continuously for the Tobacco
18 Industry Research Committee from the time you
19 left Hill & Knowlton up until the time you
20 became an independent contractor at Covington
21 & Burling; is that correct?

22 A That's correct.

23 Q When did you become the contractor for
24 Covington & Burling?

25 Q I don't know that precisely.

1 Q What year?

2 A But I know that I took an apartment at
3 Washington D.C. in '67.

4 Q Is that when you became a contractor, is when
5 you took the apartment?

6 A Yes, but I don't know what's on the contract,
7 what date.

8 Q In 1964 you would have been working for the
9 Council for Tobacco Research, is that right?

10 A That's right.

11 Q Okay. If -- I am not creating these
12 difficulties, I am merely saying your
13 recollection is poor?

14 MR. WATKINS: Well, you are
15 doing splendidly if left alone, and
16 we are not critical of you.

17 MR. HANKS: Mark this as the
18 next exhibit.

19 (O'Shea Exhibit 6 was so
20 marked for identification, and a
21 copy is attached hereto.)

22 Q Please take a look at Exhibit No. 6, Mr.
23 O'Shea?

24 A When you say please take a look at, do you
25 want me to read all this.

1 Q Just familiarize yourself with it. If you
2 want to read it all you are welcome to. I'm
3 not going to ask questions about the substance
4 of the document.

5 MS. ALEXANDER: If there is a
6 particular part you want to point
7 him to.

8 Q Okay. I will ask a question on this Exhibit
9 No. 6.

10 A Yes.

11 Q It appears to be the press releases from the
12 Council for Tobacco Research?

13 A Uh-huh.

14 Q And it's dated January 31, 1967; is that
15 correct?

16 MS. ALEXANDER: Once again,
17 the record can speak for itself.
18 If you want to ask him if he
19 recognizes it or if he has a
20 recollection, go ahead.

21 MR. HANKS: I think I am
22 acting properly. I am going to go
23 ahead.

24 Q Dated January 31, 1967?

25 A (Nods)

1 Q The court reporter has to have a yes or no to
2 take it down. This exhibit, 6 it's got your
3 name on it, too, doesn't it?

4 MS. ALEXANDER: Objection.

5 Q You can answer that Mr. O'Shea. She is just
6 making an objection for the record. It's got
7 your name on it, doesn't it.?

8 A Yes. It has my name on it. I helped prepare
9 the annual report, which is the subject of the
10 press release during 1967 -- 19 -- during
11 1966.

12 Q You prepared annual releases, you prepared the
13 annual report for the CTR for the year 1966
14 and annual reports released in the year 1967;
15 is that correct?

16 A Yeah, I guess. I mean I probably drafted the
17 release.

18 Q Probably drafted this press release, Exhibit
19 6?

20 A Yeah.

21 Q It's dated February 1, 1967. When would you
22 have drafted it, do you know?

23 A I imagine sometime before Christmas. I don't
24 know. And really I do not recollect.

25 Q I understand. And you are telling the truth

1 here?

2 A My lawyer will give me hell.

3 MS. ALEXANDER: Let me put in
4 the record the reason why I have
5 stated those objections: because
6 the witness has stated that he does
7 not recall. I think it's pretty
8 apparent that this document does
9 not refresh his recollection.
10 There are a number of sources from
11 which much of the information can
12 come in that document in the
13 records. The witness has now
14 stated his own testimony is not
15 independent of that. I think the
16 distinction between the document
17 and the testimony is being lost.
18 That's the basis of my objection.
19 If you are going to be continuing
20 along this line of questions, this
21 will be a running objection and I
22 won't again interrupt.

23 MR. HANKS: You are a little
24 incorrect. This exhibit does
25 refresh his memory. He testified

1 he remembered drafting it for the
2 1966 report.

3 MS. ALEXANDER: The transcript
4 will show what it did and did not
5 reflect.

6 MR. HANKS: I like that
7 transcript.

8 MS. ALEXANDER: You may not
9 when you see it.

10 Q You drafted 1966's report for the Council for
11 Tobacco Research, didn't you?

12 A When you say draft, there are portions of it
13 that I wrote.

14 Q Okay.

15 A And there are portions I did not write.

16 Q You worked on it?

17 A I worked on it; I helped produce it.

18 Q Do you remember whether or not you got any
19 contacts about the 1966's annual report?

20 A No I don't think so. Usually they were little
21 noted.

22 Q I believe that. Other than participating in
23 the drafting of the annual reports for CTR,
24 and you have heard of that acronym, CTR?

25 A Yes.

1 Q I am going to use it referring to the Council
2 for Tobacco Research. Other than
3 participating in the annual reports and
4 preparing press releases, what other actual
5 chores did you do at TIRC? And you mentioned
6 you fielded inquiries, too, so let's not talk
7 about that again?

8 MS. ALEXANDER: What time
9 period are you talking about.

10 Q Well, all during the time period.

11 A I also mentioned that I served as secretary to
12 the scientific advisory board.

13 Q That came later sometime after you first came
14 to work there?

15 A I remember going to two of their winter annual
16 meetings.

17 Q SAB annual meetings?

18 A Yes, those were always held outside of New
19 York City.

20 Q Okay?

21 A You know, I think probably most of the
22 meetings I have attended.

23 Q You have attended most of the scientific
24 advisory board meetings.

25 A Yes.

1 Q What did you do as secretary to the scientific
2 advisory board?

3 A Listened and took notes.

4 Q Did you actually prepare the minutes of those
5 meetings?

6 A I drafted them by recollection, which I gave
7 to Dr. Little.

8 Q And then what happened to it?

9 A You know, I don't know exactly what happened
10 to it.

11 Q Was this draft
12 approved or disapproved by Dr.
13 Little, or did someone else
14 prepare the final draft of the
15 minutes?

16 A I don't know. I don't recall.

17 Q You didn't prepare the final draft?

18 A No.

19 MR. HANKS: Mark these next
20 however many exhibits.

21 (O'Shea Exhibit Nos. 7 through
22 14 were so marked for
23 identification, and a copy is
24 attached hereto.)

25 Q I am going to hand you these exhibits 7

1 through 14 and you can look at them if you
2 will, please?

3 MS. ALEXANDER: Didn't you do
4 this one other time.

5 MR. HANKS: They are all the
6 same. I wasn't going to cover each
7 of them.

8 I don't mean they are all the
9 same, they are all the same type.

10 MR. DYM: Dale, are these
11 documents provided to you by CTR.

12 MR. HANKS: Yes.

13 A Yeah.

14 Q Okay. Do you know what they are?

15 A I know what they purport to be. I do not
16 recollect these documents. I just don't store
17 that kind of data.

18 Q What do they purport to be?

19 A They are confidential reports of the
20 Scientific Advisory Board meetings. I gather
21 covering the period '64-65.

22 Q Okay. Each of these exhibits, reflects the
23 attendees at the meeting; do they not?

24 MS. ALEXANDER: I am going to
25 have the same objection. I will

1 state it now.

2 A It does.

3 Q You are listed as attending each of these
4 meetings, are you not?

5 A I will look again, and I presume so, since my
6 faulty recollection is I attended these
7 barbeques.

8 Q What was that?

9 A Since my recollection was that I attended
10 these barbeques.

11 Q Is that what they were, barbeques?

12 A Yeah.

13 Q What went on at Scientific Advisory Board
14 meetings?

15 A They sat around in a smaller group than this.
16 And they systematically went over grants after
17 aid applications.

18 Q Okay?

19 A And I sat and tried to take notes on them.

20 Q These exhibits, they list your title as
21 assistant to the executive director for CTR?
22 Did you ever have that title?

23 A I think so, yeah. I think when we got things
24 squared away that was my title.

25 Q At any of these business meetings you

1 attended, did they ever discuss whether
2 cigarette smoking causes disease? Okay?

3 A Now, I just described, I mean the essential
4 business was the consideration of applications
5 for grants.

6 Q How many meetings of the SAB, approximately,
7 did you attend?

8 A I do not recollect. You know, it seems to me
9 there were four a year but I don't even know
10 that that recollection is accurate.

11 Q Okay, did you -- I am not going to try to pin
12 you down to a number, but did you attended
13 more than ten of them?

14 A I think that's not a fair question. I don't
15 recall how many there were.

16 MS. ALEXANDER: I join the
17 witness' objection.

18 Q You attended more than one, did you not?

19 A Yes, I certainly did.

20 Q You will agree you attended at least as many
21 as these exhibits show?

22 A Yes, and probably more.

23 Q Okay.

24 Q Did you attend other than these meetings?

25 Were any other meetings held by the Council

1 for Tobacco Research?

2 A I don't---I don't recall any other
3 meetings, no.

4 Q Did they have--by that time they weren't a
5 corporation, but did they have committee
6 meetings?

7 A No.

8 Q Okay, Well --

9 A Are you going to prove me a liar.

10 Q Oh, no. I am not trying prove you a liar. I
11 am just trying to jog your memory.

12 MR. HANKS: Mark the next two,
13 please.

14 (O'Shea Exhibits 15 and 16
15 were so marked for identification,
16 and a copy is attached hereto.)

17 Q Let me hand you these two exhibits. I am
18 finished, I think for the time being with 7
19 through 14.

20 A All right.

21 Q Okay. Do they refresh your memory as to other
22 meetings that the Council for Tobacco Research
23 held?

24 A No, blessedly.

25 Q What's that?

1 A No, blessedly. I don't recall those meetings.

2 Q Okay?

3 A They are, yeah, their annual meetings.

4 Q Okay, Well, do these documents Exhibits 15 and
5 16 reflect the reports of the annual meeting
6 for CTR?

7 A Apparently, but I just do not recall those
8 meeting at all.

9 Q You do not recall them being held?

10 A That is right. No, I don't have any
11 recollection.

12 Q That report itself shows your presence at your
13 meeting. The exhibits reflect the attendees,
14 do they not?

15 A They have a list of the people. I do not
16 recall the meeting.

17 Q They reflect your name, do they not?

18 A I do not recall the meeting.

19 Q My question is Exhibit R, you are named as an
20 attendee?

21 A It doesn't reflect my name; it lists my name.

22 Q That was a bad choice of words.
23 Do you know Robert Walker?

24 A I seem to recollect that he is president of
25 American.

1 Q American Tobacco Company. Do you know, Cyril
2 Hetsco?

3 A Uh-huh.

4 Q What was he?

5 A I think he was general counsel.

6 Q He was a lawyer.

7 A Yes, a lawyer.

8 Q For whom?

9 A American.

10 Q Do you know E. P. Finch?

11 A No, I don't recall that name.

12 Q Do you know Addison Yeaman?

13 A Yeah.

14 Q Who was he employed by?

15 A Brown and Williamson.

16 Q These people I have just mentioned, did you
17 meet them when you were working for TIRC?

18 MS. ALEXANDER: Or is it CTR.

19 Objection. No foundation.

20 Q Did you ever meet these men I just asked you
21 about?

22 A I certainly met the name Hetsco when I worked
23 for Covington & Burling.

24 Q Okay?

25 A I don't recall meeting them during this period

1 but you remember talking about--

2 Q During the time you were at CTR, did you deal
3 with any lawyers representing someone in the
4 tobacco industry?

5 A We had--I virtually remember no contact with
6 lawyers. Usually there was a Chairman.

7 Q A Chairman of what, sir?

8 A Of CTR.

9 Q Okay?

10 A And he was our sole industry contact.

11 Q Was the Chairman ever a lawyer?

12 A I don't remember that he ever was. I think
13 Hartnett was Chairman throughout the period,
14 but I might be wrong in that.

15 Q During that period did you know Henry Ramm?

16 A I don't think I met Henry during that period
17 of time, no.

18 Q Did you meet him later on?

19 A Yes.

20 Q Henry Ramm is a lawyer; is he not?

21 A Yeah.

22 Q Is he still alive?

23 A I don't know.

24 Q He was associated with R.J. Reynolds, is that
25 right?

1 A That's correct.

2 Q In these annual reports, the annual reports
3 CTR prepared, they contained abstracts of
4 papers, did they not?

5 A I think so, you know, I can't quite visualize,
6 but I believe they did.

7 Q I didn't bring one with me. That's about the
8 only thing I didn't bring. Did you write --

9 A No I didn't, I didn't --

10 MS. ALEXANDER: Got to let him
11 ask you what you didn't write.

12 A Okay.

13 Q Did you prepare --

14 A The abstracts.

15 Q Any abstracts for the annual reports?

16 A No.

17 Q You said earlier -- Go ahead?

18 A I might have proofed them or edited them, but
19 I didn't write them.

20 Q Then what exactly did you do with the annual
21 report?

22 A I proofed it, first of all.

23 Q How do you go about doing that?

24 A Get everybody organized to get them to produce
25 their papers by the time. There was not a lot

1 of independent creative activity. I think
2 Hockett supervised abstracts. And Little was
3 perfectly capable of saying whatever he wanted
4 to say.

5 Q Then who actually wrote the abstracts, do you
6 know?

7 A No, I don't. I think it was Hockett; but I
8 don't know.

9 Q It wasn't the grantees of CTR?

10 A It might have been, but I would think they
11 would all write differently. I therefore, you know
12 would have to get it together.

13 MR. HANKS: Pull together.

14 THE MASTER: Use the same
15 system of the scientific
16 nomenclature, that kind of thing?

17 Q Other than the activities on your part at CTR
18 that we have talked about, what else if
19 anything did you do for CTR while you worked
20 here?

21 A That's really what I recollect. You know, I
22 am sure there are exceptions, but-- You know
23 those are the highlights of twenty some years
24 ago.

25 Q While you were at CTR did you have any duties

1 related to CRS's Literature Research
2 Department?

3 MS. ALEXANDER: I again would
4 object. Lack of foundation.

5 A I mean there was as librarian, you know, --.

6 Q Was the librarian Kenneth Austin?

7 A I didn't recollect, but now that you mention
8 his name, probably was.

9 Q Okay, had you heard of the Literature Research
10 Department at CTR?

11 A Beg your pardon.

12 Q The Literature Research Department.

13 A What was your initial question, did I miss
14 something? What did you ask me first.

15 Q I don't remember. Could we have the first
16 question read. Let's start with the question,
17 have you heard of Literature Research
18 Department of the Council for Tobacco
19 Research.

20 A Well, I didn't hear of anything so fancy. We
21 had a library.

22 Q You never heard it called the Literature
23 Research Department?

24 A No.

25 Q Okay. Did you have any duties at CTR or did

1 you conduct any activities relating to
2 collecting and abstracting scientific and
3 medical articles?

4 A No.

5 I followed the literature.

6 Q Was anyone else at CTR collecting and
7 abstracting scientific and medical articles?

8 MS. ALEXANDER: Are we still
9 talking about the 1960's period.

10 Q Yes, while he was there?

11 A Let me say first of all, you know I don't know
12 about abstracting. Second, there was that
13 regularly I got a list of the interesting
14 articles. And you know, I could ask the
15 library if I wanted to see any of them.

16 Q Okay.

17 A I don't know. You know, I don't know that any
18 of them took the form of abstracts.

19 Q Was the list of articles that you just
20 mentioned, was that something called the
21 CURRENT DIGEST?

22 A I don't recall.

23 Q Have you ever heard of something called the
24 CURRENT DIGEST?

25 A I have at a later date heard of it.

1 Q Okay.

2 A I don't know--I didn't recollect it.

3 Q While you were at Council for Tobacco Research
4 did you participate in any type of literature
5 collection project?

6 A CTR had a library which served the scientific
7 staff. And you know, they attempted to get
8 all the current medical literature so that
9 they could consider grants.

10 Q You didn't have any activities pertaining to
11 the library's function, did you?

12 A Not that I recall.

13 Q Okay?

14 A Except reading --.

15 Q Okay. Well, after you read whatever the list
16 you read, was it an assignment of yours to do
17 anything with that knowledge?

18 A No, I just had to be aware of what was going
19 on.

20 Q Just to keep you updated?

21 A Yeah, kept up-dated. When I was in the meetings
22 with the scientific advisory committee, I knew
23 quite a bit about the subject matter.

24 Q I am going to hand you page 16 of Exhibit 1,
25 and you can look at it and read it if you want

----- ALICE A. JANETSKY, CSR, RPR -----

BUTLER CTR 005160

1 to.

2 A Yeah.

3 Q Okay. It appears to be a letters by Tom Hoyt,
4 doesn't it?

5 A Yes.

6 Q Do you know who Jerome Abdulla is? have you
7 ever heard the name?

8 A No.

9 Q Mr. Hoyt in 1968 was executive director for
10 CTR, wasn't he?

11 A Yeah.

12 Q At paragraph two the sentence: "Received prior
13 to February 1, 1959, " does that refresh your
14 memory as to whether you were working, doing
15 any work for CTR before 1962?

16 A It would, on the basis of my testimony, lead
17 me to think it is incorrect.

18 Q The letter is incorrect?

19 A Yeah.

20 Q And you were on a pension plan with CTR while
21 you were there, were you not? I gather on the
22 basis of this?

23 MS. ALEXANDER: Object to the
24 testimony unless you are going to
25 establish there is some independent

1 recollection.

2 Do you recall receiving
3 pension money?

4 Q A CTR pension?

5 A No, I don't.

6 Q Is Mr. Hoyt a poor historian?

7 A I don't know.

8 Q It's these dates are poor.

9 A You know that may come.

10 Q If you want to keep looking at it, it's okay.
11 I am finished with it. Now, let me put it
12 back in the stack here.

13 A The fact is I have testified I commenced
14 working as of a certain date, and I left.

15 Q And it wasn't before 1955.

16 A No.

17 Q It wasn't before, later than that, was it?
18 Okay you mentioned earlier during the period
19 at TIRC or CTR your duties changed somewhat.
20 Have we covered all of the duties you ever had
21 at CTR?

22 A Well, I think I had deputized for Hoyt in his
23 absences.

24 Q What do you mean by that?

25 A I signed the checks.

1 Q Payroll checks, also?

2 A I don't recall whether they were payroll
3 checks, but I could do vendor checks and stuff
4 like that.

5 Q Okay.

6 What kind of vendors did CTR use while you were
7 there?

8 A Paper, stationery, just the ordinary functions
9 of an office.

10 Q You had library subscriptions, did you not?

11 A Yeah, but I wouldn't think there would be any
12 need for those to be --I wouldn't think I
13 would have to handle those.

14 Q Did you know what organizations you used?

15 A Yes.

16 Q Do you know what the organization 3i is?

17 A Yes.

18 Q Did CTR use services of 3i while you were
19 there at CTR?

20 A I don't know, possibly. But I just can't
21 recollect. It would have been a fairly minor
22 detail.

23 Q Did CTR use the services of any company that
24 offered storage and retrieval services for
25 scientific and medical journals?

1 A I don't know, you know, to my knowledge, no.
2 But you know 3i don't just do that.

3 Q What else did 3i do?

4 A We are in the context of -- if I remember we
5 are talking about this period.

6 Q During that period of time you worked for CTR --
7 let me start over -- 3i was in business while
8 you were at CTR?

9 MS. ALEXANDER: Pre-'.67

10 A I think so, I'm not sure. But 3i did provide
11 independent translation and a document service
12 for people. That was not necessarily
13 computerized.

14 Q Why is it that you remember they did
15 translations?

16 A Because I remember they did translations
17 because there's something I reviewed relating
18 to translations by 3i.

19 MS. ALEXANDER: Objection to
20 going into my discussions with him,
21 on the grounds of the
22 attorney-client privilege.

23 A No. I remember I did translations, you know,
24 fact as a matter of fact.

25 Q I think you mentioned this at the beginning,

1 and I'm not sure if I remember. Did you look
2 to see whether you have a copy of any
3 employment contract that you have ever had
4 with the Council for Tobacco Research?

5 A Yeah, I did. And I didn't.

6 Q Do you remember an employment contract with
7 CTR?

8 A Oh, yeah.

9 Q At TIRC?

10 A Wait a minute here, no. We are talking about
11 a deposition. Is that what you are talking
12 about, a notice of the deposition? It didn't
13 request a TIRC contract.

14 Q Okay?

15 A And I didn't mean to answer -- .

16 Q Let me look at this deposition notice marked
17 as Exhibit 4. And the documents to be
18 produced by you are all employment contracts
19 or agreements of any sort to which you have
20 been a party with the various people and
21 institutions of the tobacco industry, etc.

22 A I have always during that period felt myself
23 to be a Covington & Burling salaried employee.
24 I have had no contracts.

25 Q You haven't ever had a written contract with

1 CTR?

2 A Right.

3 MS. ALEXANDER: Mr. O'Shea did
4 make the search and did come up
5 with nothing.

6 MR. HANKS: We do not waive
7 any of the production of documents.

8 MS. ALEXANDER: There aren't
9 any documents responsive. Don't
10 worry about it.

11 MR. HANKS: I worry about
12 everything. Okay, let me think
13 where I am.

14 MR. DYM: Let me ask a
15 question.

16 Q Now, when did you leave the employ of CTR?

17 A You know, I don't recall the exact date.

18 Q Okay?

19 A But I know as I stated previously, that we
20 rented an apartment in January of '68 -- '67.

21 Q Okay. In Washington?

22 A Yes.

23 Q CTR was located in New York?

24 A Yes.

25 Q On a --?

1 A Did I get the subject wrong completely? Did
2 you ask me when I left CTR.

3 Q Yeah. You are right.

4 A Right.

5 Q Now, when you left CTR, you took a leave of
6 absence, didn't you?

7 A No, I don't -- that's what Hoyt says. I don't --
8 I don't recall that. No

9 Q What do you mean, that's what Hoyt says?

10 A That's what the letter you showed me was, but
11 I don't recall that.

12 MS. ALEXANDER: Let's note.
13 what the reference to the exhibits
14 is.

15 Q (By Mr. Hanks) This is page sixteen of the
16 exhibit 1?

17 MS. ALEXANDER: Page sixteen
18 of the exhibit 1, that's a letter
19 you were just talking about with
20 Mr. Hanks.

21 A That's the one and where, you know, I don't
22 recall dates and I don't recall the leave of
23 absence, either.

24 Q He mentions it in the letter, right?

25 A Yeah. And you--yeah.

1 Q When is the last time you received a paycheck
2 from CTR?

3 A I don't know.

4 Q Did you receive a paycheck from CTR while you
5 were living in Washington?

6 A I don't know. I doubt it, but I don't know.

7 Q Why did you -- well, let me ask you this: Did
8 you voluntarily leave CTR or were you
9 terminated?

10 A Voluntarily.

11 Q Why did you leave?

12 A Because of an interesting opportunity that
13 arose.

14 Q Where you could make a better salary?

15 A A better salary, and it was an interesting
16 problem, okay.

17 MR. HANKS: I would like to
18 take a little break here if it's
19 okay.

20 (There was a brief recess.)

21 THE MASTER: Are we ready to
22 resume?

23 Q Mr. O'Shea, I am going to hand you Page 9 of
24 Exhibit No. 1 and ask you to look at it
25 please? Okay sir. Have you ever seen this

1 before?

2 A No-- I mean I don't recollect seeing it but--.

3 Q Okay.

4 MR. HARTZELL: Could we have
5 some identification of what we are
6 talking about

7 MR. HANKS: I think I
8 identified Page 9 of Exhibit 1.
9 It's on the Council for Tobacco
10 Research letterhead, and it's to
11 Simon O'Shea from W. T. Hoyt the
12 executive director, dated August
13 8, 1967. The subject is the value
14 of the participation in the
15 employees retirement plan as of
16 June 30, 1967. And there is a
17 little more stuff in it.

18 Q Does this refresh your recollection about
19 whether you received a pension or retirement
20 benefits from CTR?

21 A Yeah. It does not refresh my recollection.
22 But, you know, I am sure on the basis of that
23 that I probably was participating in the
24 profitsharing plan, in a pension plan.

25 Q And on August 1967 you were no longer in the

1 employ of CTR?

2 A '67.

3 Q Yes, sir?

4 A No.

5 I mean, you know if---you know subject to the
6 normal vagaries of memory.

7 Q Okay, this is page 17 of Exhibit one, take a
8 look at it, please.

9 A You know that's.

10 MS. ALEXANDER: No question.

11 Do you want to identify that?

12 MR. HANKS: It appears to be a
13 letter dated March 19, 1968, to
14 Simon O'Shea Jr. from Tom Hoyt,
15 executive director for -- there is
16 no letterhead on it.

17 Q Does this refresh your recollection about
18 whether you got some money upon leaving CTR
19 from your retirement fund?

20 A First of all the whole business that we have
21 seen in these documents about the leave of
22 absence is a mystery to me. And you know I
23 had not--it doesn't refresh my recollection
24 and I don't really recall that we made that
25 arrangement.

1 Q I didn't ask you a question though just now
2 about your leave of absence. I was just
3 asking about this.

4 A It bears on the question of the prior
5 document. I don't know -- I do not know what
6 those documents mean.

7 Q Do you recall getting this letter?

8 A No, I don't.

9 Q Okay?

10 A But I am sure I did.

11 Q Okay. In this letter Mr. Hoyt writes: "I am
12 looking forward to seeing you possibly next
13 week." Did you see Mr. Hoyt after you moved to
14 Washington?

15 MS. ALEXANDER: Objection on
16 the grounds the document states
17 what it says. He has said he
18 doesn't recognize the document. He
19 has said it doesn't refresh his
20 recollection. You can ask him
21 independently about any
22 recollections he may have, but the
23 use of documents is improper in
24 this sense.

25 MS. ALEXANDER: You can go

1 ahead and answer the question.

2 Q I think my question was, did Mr. Hoyt visit
3 you after you moved to Washington?

4 A I don't recall that he did. And I know,---you
5 know -- I saw that remark when I looked at the
6 letter. You know, I think we were exchanging,
7 "you all come down," remarks. As far as I can
8 see, he did not come down, as far as I know.
9 And I politely invited him, but expected if I
10 did he would not come down.

11 Q You invited him to come down and see you there
12 in Washington, didn't you?

13 A Yes. Wait a minute what are you talking about;
14 are you again referring to that document?

15 Q No. Before we took the break, you were
16 telling me about why you left CTR. You have
17 mentioned something about an interesting
18 problem. What was the problem you referred
19 to?

20 A It doesn't matter. The interesting problem
21 was the application of computers to--at that
22 point. And---to the management of a fairly
23 extensive amount of material.

24 Q Who did you go to work for when you left CTR?

25 A Covington & Burling.

1 Q Now, who from Covington & Burling, if anyone,
2 approached you about going to work as an
3 independent contractor for them?

4 A I spoke directly with Thomas Stern.

5 A Yes.

6 Q He's a lawyer with Covington & Burling?

7 A Yeah.

8 MR. DYM: He's deceased.

9 Q Okay. Did you approach him, or did he
10 approach you?

11 MS. ALEXANDER: Which question
12 are you asking.

13 Q Did Thomas Stern approach you about going to
14 work for Covington & Burling?

15 A No. No, he didn't approach me.

16 Q Did you approach him about that?

17 A No, somebody was an intermediary, Little or
18 somebody. But I don't recollect who it was.

19 Q A man named Little?

20 A Clarence Cook Little.

21 Q Was the intermediary?

22 A I don't know, but there was someone like that
23 someone said, "there's a job to be done."

24 Q Okay?

25 A And if you are interested in it talk to C & B.

- 1 Q Why did you mention Clarence Cook Little's
2 name just now?
- 3 A Because it's--you know I have a vague
4 recollection that he did discuss it. I don't
5 know whether he was the one or not, but anyhow --
6 .
- 7 Q And at that time Clarence Cook Little was
8 still the scientific director for CTR, wasn't
9 he?
- 10 A That's correct.
- 11 Q Did Clarence Cook Little know Thomas Stern?
- 12 A I don't know what he -- you know, I don't
13 know. I do not know exactly how that contact
14 was made.
- 15 Q Did you know Thomas Stern at that time?
- 16 MS. ALEXANDER: At what time?
- 17 Q When whoever it is approached him?
- 18 A I have no recollection of how the job was
19 broached.
- 20 Q That I understand. I am asking whether you
21 knew Thomas Stern at that time?
- 22 A No I didn't. I didn't know Thomas Stern.
- 23 Q Did you know any lawyers from Covington &
24 Burling at that time?
- 25 A I don't know whether I knew lawyers from

1 Covington & Burling at that time.

2 Q You do know you accepted employment as an
3 independent contractor by Covington & Burling,
4 didn't you?

5 A That's correct.

6 Q Do you know the date your employment began
7 with Covington & Burling?

8 A No, I don't.

9 Q I am going to call Covington & Burling C & B
10 MR. DIM: It's all right, with
11 us.

12 A It wouldn't have been all right with Tom.

13 Q When you did go to work as contractor with C &
14 B, were you no longer working for CTR?

15 A That's my recollection, yes.

16 Q In the document I, well, I had better pull
17 it. We talked earlier about exhibit 2?

18 A Yeah.

19 Q Okay, and we talked about something written on
20 exhibit 2, saying that the date you started
21 employment with CTR was November 30, 1966?

22 A It doesn't seem to square off well with Hoyt's
23 recollection.

24 Q What was--I don't understand. What was Hoyt's
25 recollection?

1 A On the other letter.

2 Q That dealt with a pension plan though, does
3 not it?

4 A The one letter does. The other letter deals
5 with something else.

6 Q The other letter deals with leave of absence
7 beginning December 1, 1966?

8 A '66.

9 Q Yes, sir?

10 MS. ALEXANDER: I am going to
11 interpose an objection about the
12 two of you in discussions over what
13 the problem documents mean. And
14 I think this is the perfect
15 illustration that the document has
16 to stand on its own feet if neither
17 of you recollect it.

18 MR. HANKS: I recollect very
19 clearly

20 Q What we talked about is on page 16 of Exhibit
21 1, and that letter to Mr. Hoyt refers to you
22 taking a leave of absence from CTR since
23 December 1, 1966?

24 A I see what the document says. I don't have
25 any recollection of it.

1 MS. ALEXANDER: Objection.

2 Q That would be consistent with Exhibit 2?

3 MS. ALEXANDER: I really have
4 got to object to this.

5 Q His employment ended November 30, 1966, didn't
6 it?

7 MS. ALEXANDER: Once again
8 objection. The documents say
9 exactly what they say, and there is
10 no basis whatever for this witness
11 to be questioned about it.

12 Q That would be consistent wouldn't it?

13 A The document is wrong at the beginning date,
14 and it may be wrong at the end.

15 Q Okay, but that would be consistent with what
16 I just said wouldn't it?

17 A I don't know. What's consistent? Do two
18 inconsistencies make a consistent? I don't
19 know.

20 Q You don't know the date, November 30, 1966,
21 where it says you left CTR you don't know that
22 that's the wrong date, do you?

23 A No.

24 Q Okay?

25 A I don't know. That's what I said.

1 Q Could you have gone to work for Covington &
2 Burling as an independent contractor as early
3 as 1965?

4 A I don't think so.

5 Q Okay. Could you have gone to work for them as
6 early as 1966?

7 MS. ALEXANDER: Object to the
8 form of question. What's this,
9 "could you have"?

10 Q He doesn't recall?

11 MS. ALEXANDER: Why are you
12 asking him a hypothetical question.

13 Q He's got a chronology in his head of his
14 employment.

15 MR. DYM: I think the witness
16 testified three times that he
17 recalls also moving to Washington --

18 MR. HANKS: That doesn't have
19 anything to do with whether he went
20 to work for Covington & Burling?

21 A You know I think -- --- You know I began to
22 get things organized before--you know I rented
23 a house.

24 Q Before you moved to Washington, right?

25 A Before I moved the house physically, yes.

1 Q Before you moved to Washington in 1967 you
2 were getting things organized for your
3 employment with Covington & Burling; is that
4 correct?

5 A I don't know what that means. I mean that,
6 you know, I didn't arrive with my furniture
7 and sign an employment agreement and begin
8 work.

9 Q You had the job with Covington & Burling
10 before you moved to Washington, didn't you?

11 A Yes.

12 Q How long before?

13 A I don't know.

14 Q Okay?

15 A You know -- is there some point served? If
16 you want something, I will illuminate, I will
17 try and figure it out.

18 Q I am just trying to pin down the dates as best
19 we can with your memory.

20 A Yeah.

21 Q Let me hand you pages 18 through 22 of Exhibit
22 No. 1, and for the time being I am going to --
23 I am concerned with page 20. Actually this is
24 pages 18 through 22 of Exhibit 1. I am
25 concerned with pages 20 through 22. If you

1 could review those, but you can look at the
2 whole thing.

3 MS. ALEXANDER: Is there a
4 question pending?

5 A There is a question pending.

6 MS. ALEXANDER: Why don't you
7 wait for a question pending.

8 Q You recognize, do you recognize what pages 20
9 through 22 of Exhibit No. 1 are?

10 A I don't--first of all, you know I don't want
11 to be picky. I don't see any page 20. Oh,
12 this here, okay. Yeah--it's an unsigned
13 letter of agreement with Covington & Burling
14 for -- I don't know what is it for. Anyhow,
15 dated from 1969, and it refers to a previous
16 agreement from June of '66 or '69.

17 Q It's a letter to you, addressed to you, isn't
18 it?

19 A Yes, sir, that's correct.

20 Q In Washington?

21 A Right.

22 Q And it's from the law firm of Covington &
23 Burling, isn't it?

24 A Right.

25 Q Do you remember getting this letter?

1 A I don't remember it but you know--I would
2 expect I got it.

3 Q Okay?

4 Q Then you are right. It's not signed by the
5 sender from Covington & Burling. Do you know
6 who signed it for Covington & Burling?

7 A No, I don't. I don't know whether John or
8 Stan or Tommy signed it.

9 Q On the last page there is a place where you
10 can sign it if you accept. Do you remember
11 accepting this?

12 A In '69.

13 Q Yes, sir?

14 A I presume so.

15 Q Okay.

16 A As you previously indicated it states it is an
17 explanation of a previous document covering
18 the period of June '66 through May 30 '69.

19 Q That appears in the first paragraph, doesn't
20 it?

21 A That's correct.

22 Q Does that say it's a plan that supersedes a
23 document that ran from June 1, 1966 -- or is
24 that June 1, 1965?

25 A It looks like '66 to me.

1 MS. ALEXANDER: It looks like
2 like '66 to me too.

3 A Mine is better.

4 MS. ALEXANDER: I would like
5 to be able to say the document
6 speaks for itself. Apparently
7 that's the only thing I can say.

8 A Really.

9 Q Do you remember?

10 A As far as I am concerned, my employment didn't
11 overlap. There may be some confusion. I may
12 have assisted the Council after that date or
13 -- but you know, when I signed the agreement,
14 I didn't any longer--work for the Council,
15 except as a courtesy.

16 Q Are you convinced then that this is June 1,
17 1966?

18 A Yeah, I am convinced. And I am convinced that
19 my recollection of numbers is as bad it is.

20 Q And you didn't move to Washington until 1967,
21 is that right?

22 A That's -- yeah, that's my recollection as my
23 lease dated from then.

24 Q Okay?

25 A We could have made all of this a lot easier by

1 getting the tax records.

2 Q Do you have tax records?

3 A I am sure I do.

4 Q Tax records that would reflect your employment
5 as a contractor?

6 A That would reflect whether I received income.

7 Q You have the tax records for your payments
8 from Covington & Burling, and have tax returns
9 for that far back?

10 A Sure.

11 Q You have those in your records? Did you get
12 paid by Covington & Burling after you went to
13 work for them as an independent contractor?
14 Do you remember did your paychecks came from
15 Covington Burling?

16 A Yeah, I think so as I recall. They paid all
17 project costs that I had.

18 Q Do you remember paychecks though?

19 A They weren't paychecks I don't think.

20 Q How did you get paid?

21 A I rendered invoices for the periods, and for
22 my expense of running the office.

23 Q What about for your personal salary?

24 A I don't think so. They came as paychecks.

25 Q How did you get paid?

1 A I paid a quarterly return as far as my
2 recollection is concerned.

3 I was an independent contractor. That means I
4 wasn't on anyone's payroll.

5 Q Any checks you got, were they drawn on
6 Covington & Burling's account?

7 A I believe so, but I don't know. And I can
8 look at the tax records if you want to know.

9 MS. ALEXANDER: We will take
10 that under advisement.

11 A I will take the advice of counsel.

12 MR. HANKS: I would like
13 whatever tax records going as far
14 back as you can to 1958.

15 MS. ALEXANDER: I am not going
16 to take that kind of request. Make
17 it in writing.

18 MR. HANKS: I am putting it on
19 the record right now, from 1972 or
20 1973.

21 MS. ALEXANDER: You can put it
22 on the record if you like, but we
23 will not respond to anything but a
24 formal request for the production
25 of documents.

1 MR. HANKS: He's not a party,
2 so I can't serve a formal request.

3 MR. DYM: We will take it
4 under advisement.

5 MR. WATKINS: We will take it
6 up with the The Court if you
7 continue to be recalcitrant.

8 A I did offer to refresh my memory.

9 Q And you have those records?

10 A I have tax returns.

11 Q Okay?

12 MS. ALEXANDER: Doesn't mean
13 you can necessarily have them.

14 MR. HANKS: Of course it
15 doesn't. Margaret, I know that.

16 A Do you want my memory or my tax returns.

17 Q Both, but all we have is your memory right
18 now. So let's continue with your memory.

19 Q You know John Denniston, don't you?

20 A Yes, I do know John.

21 Q Did you know John Denniston gave an affidavit
22 in this case that we are talking about?

23 A No, I didn't.

24 (O'Shea Exhibit No. 17 was so
25 marked for identification by the

1 reporter, and a copy is attached
2 hereto.)

3 Q I am going to identify this as styled as an
4 affidavit of John Denniston's in the Munn
5 case as dated August 11, 1986. For
6 everybody's information, I think it was
7 attached to the Defendant's Supplemental
8 Motion for Protective Order on the Giller
9 matter. Okay?

10 MS. ALEXANDER: Brief in
11 support.

12 MR. HANKS: Supplemental. I
13 think it was supplemental.

14 MS. ALEXANDER: It was a brief
15 rather than a motion.

16 MR. HANKS: You are right.
17 The supplemental brief in support
18 of Motion for Protective Order, you
19 are right.

20 Q On page 2, paragraph 5, Mr. Denniston writes:
21 "In 1967 an independent contractor, Simon
22 O'Shea, was hired by Covington & Burling to
23 handle under my supervision daily dealings
24 with 3i's personnel?

25 MS. ALEXANDER: May the

1 witness see that.

2 Q Sure.

3 MS. ALEXANDER: You can take,
4 if you like, a moment to just look
5 at this document to let yourself
6 know what the context of everything
7 is.

8 Q Back on the record?

9 A Yes.

10 Q Have you taken a look at that, Mr. O'Shea?

11 A Yeah.

12 Q Mr. Denniston is incorrect, isn't he? You did
13 not go to work for Covington & Burling in
14 1967. You went to work, 1966, didn't you?

15 MS. ALEXANDER: I think we
16 have established that he does
17 not know the exact date.

18 A No, I'd say it must be difficult to write
19 history. My recollection is at variance with
20 the W-2 sources. I don't know. I don't know
21 who is right. But I would presume that that's
22 right.

23 Q Mr. Denniston, when you say you presume that's
24 right, you are pointing to this letter, page
25 20 of Exhibit 1?

1 A Yeah.

2 Q Which is a letter from Covington & Burling?

3 A Yeah.

4 Q Mr. Denniston works for Covington & Burling,
5 doesn't he?

6 A Mr. Denniston has got a memory like I have
7 got.

8 Q He works for Covington & Burling, doesn't he?

9 A I don't know. You think of it, you know -- --
10 really we will have to resolve the question.

11 Q Does Mr. Denniston work for Covington &
12 Burling?

13 A Yes, I believe he does.

14 Q Come on. I can't testify I have to get it
15 through you.

16 A Okay, fine.

17 Q You know what an affidavit is, don't you?

18 A I know what an affidavit is. They said it
19 was a brief though.

20 MS. ALEXANDER: Why don't you
21 tell him what an affidavit is?

22 Q Do you know what an affidavit is?

23 A I believe it's a notarized statement.

24 Q Have you given affidavits before?

25 A Yeah, I think so.

----- ALICE A. JANETSKY. CSR. RPR -----

BUTLER CTR 005188

1 MS. ALEXANDER: Does anybody
2 want to eat?

3 MR. HANKS: We ought to
4 resolve, I guess, what we are going
5 to do this afternoon.

6 THE MASTER: On or off the
7 record.

8 MR. WATKINS: Leave it on the
9 record.

10 MS. ALEXANDER: As I
11 mentioned, we will have to quit by
12 3:00, okay, at the latest. I think
13 you can see there's a reason for
14 that.

15 MR. HANKS: What's the
16 Master's preference as to how we
17 should proceed. My anticipation is
18 that we are going to have to, I
19 guess, take a lunch break.

20 A That's very nice.

21 MR. HANKS: I don't anticipate
22 I am going to nearly finish if we
23 are going to stop at or before
24 3:00. It is my understanding from
25 Ms. Alexander that Mr. O'Shea is

1 not available tomorrow. I
2 understand the Master may have some
3 plans also so what shall we do to
4 finish the deposition?

5 THE MASTER: Sounds like we
6 are going to need to reconvene.
7 Perhaps we need to agree on that.

8 MS. ALEXANDER: I have
9 indicated, we have no problem in
10 principle with the notion of
11 reconvening. And I don't think we
12 need to resolve on the record what
13 exactly is everybody's schedule.
14 Can we discuss that early next
15 week.

16 MR. HANKS: I would like to
17 resolve it before we leave today?

18 MS. ALEXANDER: Do you have
19 your calendar with you so you would
20 know when you would be available?

21 MR. HANKS: Yes.

22 MR. DYM: Can we talk about it
23 to Mr. O'Shea over lunch?

24 MS. ALEXANDER: And try to
25 resolve it with you. You do have

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119
your calendar here though, don't

THE MASTER: Come back at

1:30.

----- ALICE A. JANETSKY, CSR, RPR -----

BUTLER CTR 005191

AFTERNOON SESSION

MR. HANKS: Let's go on the record.

MS. ALEXANDER: Mr. O'Shea, I think you just told me that the week of the 15th is fine for you; is that right?

THE WITNESS: Yes. But I just have an engagement, the one I can't move on Thursday afternoon.

MR. HANKS: Okay. The week of December 15?

MS. ALEXANDER: Yes.

MR. HANKS: Let me ask you something first. It would be, you know, we want the Master to go ahead and continue presiding over the depositions; because there's going to be some in camera testimony. It would be a great convenience if we could resume in Houston. Is there any chance of that?

MS. ALEXANDER: No, in a word.

1 MR. HANKS: As you are wearing
2 two hats today, you are aware that
3 the week of the 15th, we are
4 probably deposing someone from The
5 Tobacco Institute.

6 MS. ALEXANDER: That's why I
7 mentioned it. Your schedule may be
8 more of a problem than Mr.
9 O'Shea's.

10 MR. HANKS: It may be that we
11 can agree to do it after Christmas
12 or in January.

13 MR. DYM: I think Mr. O'Shea
14 would prefer not doing it over the
15 holidays, either before or
16 afterwards.

17 MS. ALEXANDER: When is he
18 saying?

19 THE WITNESS: I would just as
20 soon get it over with, but quite
21 obviously you have more difficult
22 schedules than I have.

23 MS. ALEXANDER: How about the
24 very end of that week of the 15th,
25 the Friday?

1 MR. HANKS: What is that, the
2 19th? That's my trip to
3 Philadelphia. I have an
4 appointment all day in
5 Philadelphia.

6 MS. ALEXANDER: We will have
7 to obviously talk after today but
8 what if we agreed to try to do it
9 in January?

10 MS. ALEXANDER: Sure. Is that
11 all right, Mr. O'Shea.

12 THE WITNESS: Sure.

13 MR. HANKS: I have got to be
14 in Boston sometime in January and I
15 don't know the date. He has his
16 calendar, I don't have mine. If we
17 could try to do it on that trip,
18 okay?

19 MS. ALEXANDER: We will try to
20 coordinate it. Do you think
21 another day will do it?

22 MR. HANKS: I think so. Do
23 you all want to go ahead with a few
24 questions? We might just go to
25 about 2:30 or something.

1 MR. DYM: I would like to
2 avoid having more than one day
3 left. In other words, I would like
4 to finish this thing up in a day.

5 MR. HANKS: I think we can. I
6 don't think that will be a problem.

7 MR. DYM: You want to quit at
8 2:30, then?

9 MR. HANKS: Shoot for that
10 time.

11 MR. DYM: Finish it up
12 sometime on a day sometime in
13 January; is that right?

14 THE MASTER: Yes.

15 Q (By Mr. Hanks) Mr. O'Shea, while you were
16 working as an independent contractor for
17 Covington & Burling, were you performing
18 services for anyone else?

19 A I had-- an understanding with Thomas Stern
20 that the contract was not exclusive. And I
21 did not perform any services for anyone else
22 in the tobacco industry. But I did -- Well,
23 in Washington for example I did some work for
24 the Conservation Foundation on Nature
25 Conservation.

1 Q Okay.

2 A But at least initially, you know, it was a
3 full-time job getting the thing up and
4 rolling.

5 Q Did you, did there come a time -- you
6 explained this a little earlier. I am truly
7 confused is why I am going to ask you about it
8 again.

9 A Okay.

10 Q Did you bill Covington & Burling for your time
11 that you spent on this project?

12 A Yes. My recollection is yes I -- that, now in
13 that I -- you know, I employed a secretary.

14 Q Yes.

15 A And rented an office and had a telephone
16 installed. I monthly submitted those
17 expenses. I don't know whether I had to
18 submit an invoice but, you know I do recollect
19 that I paid taxes quarterly. Otherwise you
20 know, a declaration of independent estimated
21 taxes.

22 Q Yes.

23 A I don't have deductions as you refer to it.

24 Q Was there an agreement with Covington &
25 Burling whereby you would be paid a specific

1 salary?

2 A Yes.

3 Q This is over and above your expenses; is that
4 correct?

5 A That's correct.

6 Q This was an annual salary?

7 A I don't, you know, remember without having
8 looked at them, but yes, the salary or the
9 fees of it, you know, encompassed both a base
10 salary and provisions for insurance and the
11 rest.

12 Q I understand. Okay. Some fringe benefits,
13 sort of?

14 A Plus I had to carry liability insurance,
15 things like that.

16 Q And your office was set up in Washington?

17 A Yes.

18 Q Who was your secretary?

19 A I can just remember -- Well, for a long time
20 her name -- I can't remember her last name --
21 for example she was -- part of the problem was
22 she was married during the time and shortly
23 divorced. So I hardly can keep things
24 straight. Her name was Penny something, but I
25 can't remember her last name.

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- 1 Q Was she the only secretary that you had
2 during that period from when you worked for
3 Covington & Burling as a contractor until you
4 ended it?
- 5 A No, she- -- I briefly employed someone else
6 near the time I was in New York City--in
7 Washington. And she is -- her name was Joanne
8 Walker.
- 9 Q What did she do?
- 10 A Correspondence and helped Ruth read books, and
11 answered the phone when I wasn't there.
- 12 Q Do you remember the address of your office in
13 Washington?
- 14 A It was on K Street at Eighteenth. I presume
15 it was something in the 1800's or 1700's.
- 16 Q Are you aware that The Tobacco Institute has
17 an office in Washington?
- 18 A Yes, yes.
- 19 Q How far was your office from there office?
- 20 A Oh , don't know, about the same distance as
21 Covington & Burling
- 22 Q From your office?
- 23 A I don't know. I don't know. It was a block
24 or so.
- 25 Q Within walking distance?

1 A Yeah, sure. I mean, you know, so is
2 everything.

3 Q We briefly touched on this before lunch but
4 what were you asked to do by Covington &
5 Burling?

6 MS. ALEXANDER: I am going to
7 interpose at this point --in a
8 general sense at least -- an
9 objection on behalf of the tobacco
10 companies on the basis of
11 attorney-client privilege, work
12 product and consulting expert
13 privilege. I think you can
14 probably ask some questions that
15 will simply get to the foundations
16 that we can get answers to, if you
17 can make them more precise.

18 Q Were you asked to set up a type of
19 computerized storage and retrieval service for
20 use by Covington & Burling?

21 MS. ALEXANDER: You can
22 answer.

23 A I was asked to manage 3i, in establishing a
24 computerized system for dealing with the
25 medical literature. Medical and scientific.

1 For litigating lawyers in the tobacco
2 industry. And I think that's it.

3 Q You said you were asked to manage 3i?

4 A Yes. 3i to the best of my knowledge, subject
5 to our differences about dates.

6 Q Yes?

7 A Was employed by Covington & Burling and I was
8 employed to ride herd on 3i.

9 Q Okay?

10 A And to represent the interests of litigators
11 in the design of the system.

12 Q Okay. You are aware that we have taken doctor --
13 well, Fred Giller's deposition, aren't you?

14 A I am aware merely because she said so.

15 MS. ALEXANDER: Don't go and
16 waive your own privilege, okay?

17 A I am aware -- I remember only because she said
18 hello. Today someone told me that Fred said
19 to say hello.

20 MS. ALEXANDER: Right. That
21 is not a privileged statement.

22 A I do not know anything about the other
23 depositions you took.

24 Q Okay.

25 A I have not seen any depositions.

1 Q I understand Fred Giller -- you know Fred
2 Giller, don't you?

3 A I know Fred.

4 Q He worked for 3i at that time, didn't he?

5 A He worked at some period in 3i's history. I
6 don't know that I didn't encounter him during
7 the first year, year and a half of the
8 operations.

9 Q Okay.

10 A And he may have worked for them, I was not
11 associated with all the functions initially.
12 I was concerned with computer design
13 primarily.

14 Q You, yourself played a role in designing the
15 support system that was used at 3i?

16 A I certainly related what we wanted to get out
17 of it and tried to insure that we did.

18 Q When you first began working under the
19 agreement with C & B, whom did you deal with
20 at 3i?

21 A Brodsky.

22 Q Gerald Brodsky?

23 A Yeah.

24 Q Was he the head man there?

25 A Yeah.

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1 Q Anyone else at 3i?

2 A No, I don't -- you know it's just somewhat
3 faulty recollection. But I, you know, don't
4 recollect anyone else in the cast of
5 characters at that point. It probably --
6 again, if there were other people involved,
7 it would have been from the computer side.
8 That was our first problem.

9 Q 3i was located in Philadelphia?

10 A That's correct.

11 Q Why was your office in Washington as opposed
12 to Philadelphia?

13 A Because Covington & Burling was in Washington.
14 And I guess that's it.

15 Q Okay.

16 A I would have preferred it to have been in New
17 York.

18 Q I am going to go through this kind of rapidly.
19 Maybe when we get back together we can talk in
20 real specific detail. How long did it take to
21 get this system on line?

22 A Well --

23 MS. ALEXANDER: For all of our
24 sakes can you tell us what you mean
25 by "on line"?

1 Q Well, operating?

2 MS. ALEXANDER: For what
3 purpose, to what degree of
4 efficiency?

5 MR. DYM: I have got a little
6 bit of a problem at this point. It
7 seems to me your inquiry is
8 necessarily asking Mr. O'Shea, does
9 this include what he learned when
10 he was a contractor with C & B
11 working on a litigation support
12 system, as he has testified. And
13 it does seem to me that that does
14 intrude on the work product on
15 privilege protection available to C
16 & B's clients at the time, namely
17 tobacco companies. So unless the
18 companies instruct Mr. O'Shea to
19 answer, he should not be required
20 to do so. That's the problem I
21 have.

22 MR. HANKS: So that's an
23 objection.

24 MR. DYM: It's an objection,
25 yeah.

1 Q (By Mr. Hanks) I am not asking really for
2 anything specifically about the system, I am
3 asking how long it took before it was
4 operating. I think that's okay, but I guess
5 we can--

6 THE MASTER: Do you want a
7 ruling?

8 The ruling is that he can
9 answer that question. We are not
10 getting into any instructions or
11 anything that he learned.

12 A I am a bit of a perfectionist. I never
13 thought it worked right anyhow. And my
14 clients were a bit of perfectionists, and they
15 never thought it worked right anyhow. I would
16 say in point of fact that it was used for
17 litigation probably two years or so after we
18 began work.

19 Q Okay. How do you know that it was used for
20 litigation?

21 MS. ALEXANDER: Objection.
22 This really is going to get into
23 the details of the uses. How do
24 you know, it can only be answered in
25 terms of use which is the heart of

1 privilege.

2 MR. HANKS: One of the uses it
3 was put to is really the heart of
4 the matter from my standpoint. I
5 am just asking him if it was used
6 for litigation purposes. I am
7 asking him how he knows. I don't
8 think there's a problem.

9 MS. ALEXANDER: In that case
10 maybe it's proper to suggest to
11 the witness, if you can answer
12 that question without in any way
13 discussing the nature of the use or
14 the nature of the system, I think
15 that's probably legitimate.

16 MR. DYM: The other thinking
17 he really should avoid, if in fact
18 he really learned anything from
19 counsel, that should not be
20 disclosed it seems to me.

21 A I think I would have to take their advice
22 about that. I don't understand their advice.

23 MR. HANKS: Let me ask some
24 more questions.

25 MS. ALEXANDER: Okay.

1 Q Do you have personal knowledge that this
2 system was used for litigation purposes?

3 MS. ALEXANDER: I understand
4 that this is important to your
5 inquiry, Dale, and I think that
6 these are questions that we can
7 handle better In Camera. The
8 reason is we can't instruct him.
9 Nobody knows.

10 MR. WATKINS: Answer is Mr.
11 O'Shea is himself under the
12 obligation to respect the
13 privilege.

14 MS. ALEXANDER: That's why I
15 think an In Camera answer would
16 serve the purpose.

17 A I consider myself bound, you know, by the
18 confidentiality I undertook at the time of my
19 contract. You know a contractual arrangement,
20 and I don't think that that lapses.

21 THE MASTER: I am thinking
22 that if the question could be
23 answered generally, which I assumed
24 it could be, we would get farther
25 down the road rather than getting

1 itself three or four questions that
2 if he said, "Yes, I have personal
3 knowledge," we could avoid the
4 source of that personal knowledge
5 as to individual privilege. If he
6 said no, we can go on to something
7 else.

8 A Would you repeat the question then, so I know
9 what I am answering?

10 Q I am thinking -- will you read back?

11 MR. DYM: As I understand what
12 the Special Master has indicated
13 all this is explicitly a yes or no
14 answer.

15 Is that right?

16 MR. HANKS: Yes.

17 A What I would like to ask someone is what does
18 personal knowledge constitute?

19 THE MASTER: Something you
20 were told by someone else is not
21 personal knowledge. It's that
22 simple.

23 A I find it difficult to determine whether or
24 not I had knowledge that didn't come from
25 someone else. You know what I mean?

1 THE MASTER: Be careful that
2 you don't say where your knowledge
3 came from. The only question he is
4 asking you is did you have personal
5 knowledge. Personal knowledge is
6 what you saw with your own eyes,
7 handled with your own hands, as
8 opposed to what somebody told you.

9 A I don't believe I had personal knowledge.

10 Q Do you have personal knowledge that this
11 system at 3i was used for purposes other than
12 litigation?

13 A Yes, insofar as, you know, insofar as I was
14 the conduit for addressing questions to the
15 system. I knew the identity of people
16 addressing questions to the system.

17 Q Okay?

18 MS. ALEXANDER: I don't think
19 that that is an answer to the
20 question you asked. I think this
21 is the problem with this enforced
22 yes or no business. It's not
23 getting clear responses.

24 MR. HANKS: I am going to ask
25 some more questions

1 Q Did your requests for use of this system, you
2 used the term conduit. And that's a good way
3 to characterize it. Let me say that whole
4 thing is not a question. You received
5 requests for services from this system, did
6 you not?

7 A Yes.

8 Q Okay. Whom did these requests come from?

9 A Lawyers. Tobacco industry lawyers.

10 Q Were the requests from lawyers who worked with
11 Covington & Burling?

12 A No. I mean, they were requests from general
13 counsel, that is industry companies or their
14 external counsel.

15 Q Okay?

16 A Who had been previously designated.

17 Q Who designated them?

18 A I think that's beyond my knowledge.

19 Q Do you have -- did you have a list of
20 designated --

21 A Yes.

22 Q -- users?

23 A Yes, right.

24 Q Do you still have a copy of that list?

25 A No.

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1 Q Did you ever have a copy of it in your
2 personal files?

3 A Not that I know of. I wouldn't have any
4 reason. But I know who they were.

5 Q Was Henry Ramm one of them?

6 MS. ALEXANDER: Can we again
7 specify what time period we are
8 talking about.

9 Q Well, I don't know if we can--when did your
10 independent contractor status with Covington &
11 Burling end?

12 A I believe subject to letters from somebody to
13 somebody that was about '72 sometime.

14 Q Okay. Well, who were the users during that
15 period?

16 A I don't know that I can recollect all of them.
17 Is it all right to proceed?

18 MR. DYM: Go ahead.

19 A They were the general counsel who included
20 Paul Smith and Henry Ramm and Hetsco -- and I
21 have some problem in there. I had the worst
22 time with his name, from Brown on Williamson.

23 Q Addison Yeaman?

24 A Yeah, Addison Yeaman. Then, there was a
25 second string, which were external, and they

1 included Chadbourne Park.

2 Q Was it Janet brown?

3 A It was.

4 Q Okay?

5 A And there was someone from Webster Sheffield.

6 Q Frank Decker?

7 A Frank Decker and--one from Shook Hardy which I
8 think tended to be any one of three people.

9 Q Were the three people William Chin and David
10 Hardy and D. O. Hogue?

11 A Yes, Jacobs, who had different affiliations.
12 That's about all I can recall on, you know --
13 just without a lot of --

14 Q Okay?

15 A Fishing around in the memory.

16 Q Did the list of users change from time to
17 time?

18 A Yes, it does.

19 Q Okay?

20 A And, you know, special arrangements would be
21 made for trial counsel.

22 Q Who gave you the list of users?

23 A It, you know, a company might indicate who
24 they wanted to have access. But, you know, I
25 would check with Covington & Burling.

1 Q So when you say a company, you mean a
2 cigarette manufacturer would indicate?

3 A Yeah, yeah.

4 Q Okay. Well, did The Tobacco Institute ever --
5 were they ever a user of the 3i system?

6 A No, they weren't to my best knowledge. They
7 weren't ever a user. Actually the user list
8 tended to be fairly clear. We had microfiche.
9 Someone either had a microfiche, or did not
10 have it. I don't believe the Institute did.
11 Incidentally, one name we have forgotten in
12 all of that is Covington & Burling. The
13 people with The Tobacco Institute, they got
14 sent microfiche, Covington & Burling.

15 MS. ALEXANDER: Got to remind
16 you again --

17 Q Each designated user would get microfiche; is
18 that right?

19 A Yes.

20 Q Would they have -- would they receive a copy
21 of all the microfiche that 3i developed?

22 MS. ALEXANDER: Hold on. I
23 have got to check with company
24 counsel. Go ahead.

25 Q Did each designated user receive microfiche

1 from 3i or from you?

2 A We called that the apperture card list. They
3 had them.

4 Q They had a copy of all the microfiche?

5 A Unless someone came in retrospectively, and we
6 weren't able to provide it to them. In my
7 time I believe there were always sets
8 available.

9 Q I think you said that Tobacco Institute was
10 not a designated user?

11 A I don't believe so, no.

12 Q Did they ever use the system even though they
13 weren't a designated user?

14 A No, I don't believe so.

15 Q Okay.

16 A I don't think anybody who wasn't a designated
17 user used it.

18 Q Now, did Covington & Burling make requests
19 from time to time?

20 A Yes. You know, I can't recall. But you know,
21 I think they made, you know, I think their use
22 was very slight, but I think possibly they
23 made some use.

24 Q Why don't you -- well, tell me what the
25 procedure was for a designated user to get

1 information from 3i on this system?

2 A Well, the simplest way was to simply Telex me
3 on a request, which I would relay.

4 Q Okay?

5 A I preferred that. An alternative would be to
6 call me and ask me to address this question to
7 the system. This system, there was some sort
8 of categorization. An index wasn't there.

9 MS. ALEXANDER: Can you be
10 more precise than that?

11 Q Well, in order to get some information from
12 this system, you had to use certain words and
13 things of that nature, didn't you?

14 A Well, let me say just as to describe it in
15 general.

16 Q Okay?

17 A It's like the index at the back of a book and
18 you look up and you see that you wanted
19 everything on "Red Indians". And so you ask
20 the computer for "Red Indians". And it tells
21 you the pages they are on.

22 Q Would you be the person who would do that, go
23 through the back of a book for the index
24 terms? Would that be one of your jobs? Do
25 you understand -- you may not understand what

1 I am asking. Let's say you get a Telex from
2 Covington & Burling. It's a question. Did
3 you have to do anything to the question in
4 order to get the information from the system?

5 A It depended on whether the user was familiar
6 and, you know, if the user, you know, knew
7 there were ten thousand "Red Indians". You
8 are right, if he wanted, "Red Indians in
9 1967," I might have to add '67.

10 Q There was an index of terms, was there not?

11 A Yes, the system had a logic to itself.

12 Q Okay?

13 A You could ask A and B and C but not D.

14 Q Okay?

15 A And you could ask for those in any given year.

16 Q Okay, did you use the index of terms to
17 formulate your inquiry to the system?

18 A When I needed the indexes, yeah, I did; but
19 often I didn't even need the index.

20 Q You told me the first step is you would get
21 the Telex, and if you needed to formulate a
22 inquiry, you would -- how would you relay that
23 information to 3i?

24 A By telephone.

25 Q By telephone?

1 A Yes.

2 Q Did you keep a record at your office of each --

3 A The system kept records, yes.

4 Q Did you keep a record, though, at your office
5 of the requests?

6 A Right, but I mean, there were system records;
7 they weren't personal records.

8 Q I mean for every request you would make of the
9 system, you had a record?

10 A Yes.

11 Q And did you file them at your office; that's
12 what I am asking.

13 A Did I file the question? I don't recall
14 whether I filed the question; I certainly knew
15 for sometime.

16 MR. WATKINS: Question was
17 about whether or not you kept them
18 past a certain point.

19 A I don't know.

20 Q The requests you would get from a designated
21 user, what information would be on that
22 request?

23 MR. PARRISH: You are asking
24 him, Dale, to describe what kind;
25 you are not asking for specific

1 information, right?

2 MR. HANKS: I am not asking
3 for the request. You have already
4 told me there was a request for
5 some information on the Telex.

6 Q What else was on the Telex?

7 A Oh, it was addressed to me. And you wouldn't
8 know from a Telex directory that I -- what my
9 function was or it does not carry my name or
10 anything. And the person identified himself.

11 Q Okay?

12 A And then the question was there. And if there
13 was some -- if he wanted to specify how
14 quickly he needed it, he usually told me that.

15 Q Was there any indication on the Telex of the
16 use to which the information would be put?

17 A No, but it was, you know -- but I could
18 clearly tell from the nature of the question
19 whether or not it fell within the guidelines
20 for the use of the system.

21 Q Could you tell me from the Telex which
22 cigarette manufacturer the request was made on
23 behalf of?

24 MR. PARRISH: Object to the
25 form of the question.

1 A I did tell you I had the names.

2 MS. ALEXANDER: He may want to
3 rephrase that question.

4 Q Let's assume you got a Telex from Mr. Jacobs,
5 whom you have said he represented several
6 different tobacco industry entities.

7 MS. ALEXANDER: That's not
8 what he said.

9 Q Okay Mr. Jacobs represented several different
10 tobacco companies, didn't he?

11 A I don't know.

12 Q Do you know whether Shook, Hardy & Bacon
13 represented several different tobacco
14 companies?

15 A No, I don't. I knew they were designated
16 users.

17 Q You couldn't tell from the Telex which tobacco
18 company was involved as far as the request
19 goes?

20 A Except those that had on-going relationships.
21 I mean I knew who general counsel were.

22 Q Okay?

23 A And I knew who their external counsel was.

24 Q So if you get the one, say, from Henry Ramm,
25 you knew it was for R. J. Reynolds?

- 1 A Yes.
- 2 Q If you have got one from Covington & Burling,
3 do you know who it was?
- 4 A No. Just came from the boss. I know that.
- 5 Q Okay. So then you would -- I am going to use
6 the word -- relay the question to 3i?
- 7 A Right. I wouldn't have to format it. But I
8 would relay it.
- 9 Q Then would you get something back from 3i?
- 10 A Yeah.
- 11 Q What would you get back from 3i?
- 12 A A Telex saying in effect, "Question number
13 eight," and listing accession numbers.
- 14 Q Accession numbers?
- 15 A Yeah.
- 16 Q When you say question number eight, were the
17 questions given a number as they came in?
- 18 A Just sequentially numbered.
- 19 Q Do they start with number one?
- 20 A I don't know. I don't recall that.
- 21 Q Did the numbering system start new every year?
- 22 A I don't know that.
- 23 Q What would you do with the accession numbers?
- 24 A Unless it looked to me like there was more
25 than anyone would like to know about Red

1 Indians, I would send it to the client.

2 Q When you got the Telex back from 3i, did you
3 keep a copy of it there at your office?

4 A I don't think so. For one thing, you know
5 because the system was always changing through
6 new input. An old question does not have an --
7 old answers do not have validity three months
8 later. It's more likely to keep the question
9 for a while.

10 Q Okay?

11 A And the answer.

12 Q What else would be contained on the Telex you
13 would get from 3i?

14 A My recollection is nothing.

15 MR. HANKS: Well, do you all --
16 I guess we are going to have to stop.

17

18

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25

1 THE STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, Alice A. Janetsky, Official Court
4 Reporter in and for the 215th Judicial District of
5 Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription
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19 WITNESS my hand and seal of office this
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